



**OFFICE OF THE ATTORNEY
GENERAL**

TAXATION DIVISION

**COMPTROLLER OF PUBLIC ACCOUNTS
CASE LIST AND SUMMARY OF ISSUES**

July 1, 1999

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Franchise Tax

3 Beall Brothers 3, Inc. v. Sharp, et al. Cause #97-05710

Franchise Tax; Refund Filed: 05/12/97 Period: 1993 Amount: \$732,559	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Plaintiff challenges franchise "additional" tax imposed after Plaintiff merged out of existence, on the grounds that the tax discriminates without a rational basis between fiscal and calendar-year taxpayers, under state and federal equal taxation provisions, and violated the federal commerce clause nexus and fair relation tests.

Status: Plaintiff's Motion to consolidate *Palais Royal* with *3 Beall Brothers* denied. Hearing on Cross-Motions for Summary Judgment heard 05/14/98. Plaintiff's Motion granted 05/26/98. Judgment signed 06/25/98. Notice of Appeal filed 09/18/98. Case submitted on oral argument to the Third Court of Appeals on 03/10/99. Post-argument briefs and responses filed.

Adams Resources & Energy, Inc., Service Transport Co. and ADA Crude Oil Co. v. Comptroller Cause #98-08575

Franchise Tax; Refund Filed: 08/05/98 Period: 1993-1996 Amount: \$77,428	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson Philip P. Sudan, Jr. Mark F. Elvig Ryan & Sudan Houston
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Issue: Whether Plaintiff's officer and director compensation should be added to taxable surplus for franchise tax purposes.

Status: On hold pending outcome of *Shaklee* and *May Department Stores*.

B&A Marketing Co., by and through its Successor-in-Interest, Atlantic Richfield Co. v. Sharp, et al. Cause #97-01522

Franchise Tax; Protest Filed: 02/07/97 Period: 1992 Amount: \$2,125,372	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne R. David Wheat Emily A. Parker Thompson & Knight Dallas
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Issue: Whether Plaintiff is subject to the "additional tax" imposed by Tax Code §171.0011 for the report year in which it dissolved.

Status: Hearing on Cross Motions for Summary Judgment was held 04/27/98. Court granted Plaintiff's Motion for Summary Judgment 08/27/98 and denied the State's MSJ. Comptroller has appealed and Oral Argument was heard 04/14/99. Decision pending.

Bandag Licensing Corp. v. Sharp, et al. Cause #98-06931

Franchise Tax; Protest Filed: 06/29/98 Period: 1990-1993 Amount: \$274,831	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez Gilbert J. Bernal, Jr. James F. Martens Stahl, Martens & Bernal Austin
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Issue: Whether Plaintiff has nexus with Texas for franchise tax purposes because it holds a certificate of authority.

Status: Judgment for plaintiff. Appeal in progress.

Beef Products, Inc. v. Rylander, et al. Cause #99-01193

Franchise Tax; Protest Filed: 02/01/99 Period: 1992 and 1993 Amount: \$331,040.60	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Tom Tourtellotte Tourtellotte & Kennon Austin
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Issue: Whether the Comptroller properly applied the throwback rule to apportion gross receipts under the pre-amended statute. Whether the throwback rule violates the commerce clause. Whether the rule as applied is unconstitutionally retroactive and violates due process.

Status: Answer filed.

Bethlehem Steel Corp. v. Sharp, et al. Cause #96-10644

Franchise Tax; Protest Filed: 09/03/96 Period: 1988-1991 Amount: \$608,029	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo James F. Martens Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin
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Issue: Whether certain liability accounts are excludable from surplus as debt. Whether post-retirement benefits are "debt." If included in surplus, is the preemption provision of ERISA violated?

Status: Answer and motions filed. Defendants filed Motion to Dismiss for Want of Prosecution. Hearing 07/07/99.

Central Freight Lines, Inc. v. Sharp, et al. Cause #96-10645

Franchise Tax; Refund Filed: 09/03/96 Period: 1988-1992 Amount: \$488,575	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo James F. Martens Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin
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Issue: Whether post-retirement benefits are a "debt." If included in surplus, is preemption provision of ERISA violated? Also, whether the 1991 franchise tax amendment is unconstitutionally retroactive.

Status: Hearing on Defendants' Motion to Dismiss for Want of Prosecution 07/07/99.

Champion Spark Plug Co. v. Sharp, et al. Cause #97-09417

Franchise Tax; Protest Filed: 08/18/97 Period: 1992-1995 Amount: \$7,689	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo James F. Martens Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin
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Issue: Whether post-retirement benefits are a “debt.” If included in surplus, is preemption provision of ERISA violated? Whether certain reserve accounts were erroneously included in surplus.

Status: Hearing on Defendants’ Motion to Dismiss for Want of Prosecution 07/07/99.

Consigned Sales Distributors, Inc. v. Sharp, et al. Cause #95-06984

Franchise Tax; Refund Filed: 06/05/95 Period: 1989-1992 Amount: \$723	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Fred O. Marcus Horwood, Marcus & Braun Chicago, Illinois David E. Cowling Jones, Day, Reavis & Pogue Dallas
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Issue: Whether the Texas franchise tax is a tax imposed on or measured by net income for purposes of Public Law 86-272; if so, Plaintiff contends that it is not subject to the Texas franchise tax. Whether Plaintiff is doing business in Texas. Whether post-retirement benefits should be included in taxable surplus.

Status: Discovery in progress.

Cooper Industries, Inc. and McGraw-Edison Co. v. Sharp, et al. Cause #96-12365

Franchise Tax; Protest Filed: 10/15/96 Period: 1988-1991 Amount: \$1,346,957	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo James F. Martens Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin
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Issue: Whether post-retirement benefits are a “debt.” If included in surplus, is preemption provision of ERISA violated? Whether certain other estimated liabilities were erroneously included in surplus by the Comptroller. Whether §171.109 (j) (1) is retroactive.

Status: Hearing on Defendants’ Motion to Dismiss for Want of Prosecution 07/07/99.

Cooper Industries, Inc. v. Sharp, et al. Cause #96-08531

Franchise Tax; Protest Filed: 07/22/96 Period: 1992-93 Amount: \$472,589	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo James F. Martens Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin
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Issue: Whether Plaintiff’s obligations under its ERISA deferred compensation plan are debt for franchise tax purposes. Whether Tax Code §§171.109(a) and (j)(1) are preempted by ERISA. Whether certain other accruals are “debt.”

Status: Answer filed. Court set Defendants’ Motion to Dismiss for Want of Prosecution 07/22/99.

Cooper CPS Corp. and Cooper Power Systems v. Sharp, et al. Cause #95-13734

Franchise Tax; Refund Filed: 11/01/95 Period: 1988, 1990-1991 Amount: \$112,536	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo James F. Martens Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin
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Issue: Are post-retirement benefits debt? Does ERISA preempt Tax Code §§171.109(a)(3) and (j)(1)? Denial of equal protection? Was §171.109(j)(1) applied retroactively in contravention of the U.S. and State Constitutions?

Status: Answer filed. Hearing on Defendants' Motion to Dismiss for Want of Prosecution 07/07/99.

Dana Corp. v. Sharp, et al. Cause #96-03598

Franchise Tax; Protest Filed: 3/28/96 Period: 1988-1991 Amount: \$804,971	Asst. AAG Assigned: Plaintiff's Counsel:	Jim Cloudt David E. Cowling Sheryl S. Scovell Jones, Day, Reavis & Pogue Dallas
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Issue: Whether certain reserve accounts, including post-retirement benefits, are debt for franchise tax purposes. Whether Tax Code §171.109 (j)(1) is preempted by ERISA.

Status: Answer filed.

Delco Electronics Corp. v. Sharp, et al. Cause #97-12045

Franchise Tax; Protest & Refund Filed: 10/22/97 Period: 1992-1995 Amount: \$536,478	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo L. G. "Skip" Smith Clark, Thomas & Winters Austin
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Issue: Whether interest, rental, and royalty income earned by Plaintiff should not be included in income because it was derived from discrete business enterprises that served an investment, rather than an operational function, and the activities producing the income were not part of the unitary business conducted by Plaintiff in Texas. Whether amounts due under fixed term operating leases were debt for franchise tax purposes.

Status: Discovery filed.

E.I. Dupont Denemours & Co., Inc. v. Sharp, et al. Cause #97-06340

Franchise Tax; Protest & Refund	Asst. AAG Assigned:	Christine Monzingo
Filed: 05/28/97	Plaintiff's Counsel:	Gilbert J. Bernal, Jr.
Period: 1989-1993		James F. Martens
1988-1994		Stahl, Martens & Bernal
Amount: \$2,347,781		Austin
\$11,046,447		

Issue: Whether post-retirement benefits are a "debt." If included in surplus, is preemption provision of ERISA violated? Operating lease obligations--Whether amounts due under fixed term leases are excludable from surplus as debt. Whether certain other reserve accounts were erroneously included in surplus.

Status: Answer filed. Hearing of Defendants' Motion to Dismiss for Want of Prosecution 08/02/99.

El Paso Electric Co. v. Sharp, et al. Cause #96-07178

Franchise Tax; Refund	Asst. AAG Assigned:	Jim Cloudt
Filed: 06/09/96	Plaintiff's Counsel:	David H. Gilliland
Period: 1988-1989		Clark, Thomas & Winters
Amount: \$36,289		Austin

Issue: Whether unfunded pension liability is a debt that should be deducted from taxable surplus.

Status: All other issues settled 12/04/98. Discovery in progress.

El Paso Electric Co. v. Sharp, et al. Cause #96-03552-A

Franchise Tax; Refund	Asst. AAG Assigned:	Christine Monzingo
Filed: 03/27/96	Plaintiff's Counsel:	David H. Gilliland
Period: 1991		Clark, Thomas & Winters
Amount: \$39,835.42		Austin

Issue: Whether unfunded pension liabilities for report year 1991 should be deducted from surplus.

Status: Defendants' Motion to Dismiss for Want of Prosecution filed.

Fisher Controls International, Inc. v. Sharp, et al. Cause #98-08893

Franchise Tax; Protest Filed: 08/11/98 Period: 1992-1993 Amount: \$1,209,209	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Gilbert J. Bernal, Jr. James F. Martens Stahl, Martens & Bernal Austin
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Issue: Whether the "throw-back" rule applies to Plaintiff's sales to foreign states; whether the "throw-back" rule is constitutional; whether the rule should have been applied retroactively after the 01/01/94 legislative changes.

Status: Discovery in progress.

General Motors Corp. v. Sharp, et al. Cause #97-12350

Franchise Tax; Refund Filed: 10/31/97 Period: 1991-1994 Amount: \$18,788,858	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo L. G. "Skip" Smith Clark, Thomas & Winters Austin
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Issue: Whether post-retirement benefits, if included in surplus by the Comptroller, violate the preemption provision of ERISA? Operating lease obligations--Whether amounts due under fixed term leases are excludable from surplus as debt.

Status: Discovery in progress.

GTE Service Corp. v. Sharp, et al. Cause #95-09438

Franchise Tax; Protest Filed: 08/01/95 Period: 1990-1991 Amount: \$193,377	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson James F. Martens Stahl, Martens & Bernal Austin
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Issue: Whether Plaintiff's obligations under its Deferred Executive Incentive Plan and Deferred Long Term Incentive Plan qualify as debt for franchise tax purposes.

Status: On hold pending disposition of *Caterpillar*.

Gulf Publishing Co. v. Sharp, et al. Cause #98-04208

Franchise Tax; Refund Filed: 04/22/98 Period: 1992-1995 Amount: \$218,713	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether all of Gulf Publishing Company's magazine advertising revenue should be allocated to Texas receipts or should be allocated according to location of subscriber.

Status: Discovery in progress.

H.J. Heinz Co., Inc. v. Sharp, et al. Cause #98-10929

Franchise Tax; Protest Filed: 09/28/98 Period: 1992-1995 Amount: \$534,056	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo L. G. "Skip" Smith Clark, Thomas & Winters Austin Marilyn A. Wethekam Horwood Marcus & Berk Chicago
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Issue: Whether Plaintiffs are entitled to a deduction from gross receipts of receipts from sales of food shipped from outside Texas to Texas storage and distribution facilities and subsequently sold to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: Answer filed.

H.J. Heinz Co., Inc. v. Sharp, et al. Cause #98-12746

Franchise Tax; Protest Filed: 11/12/98 Period: 1992-1995 Amount: \$29,244	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo L. G. "Skip" Smith Clark, Thomas & Winters Austin Marilyn A. Wethekam Horwood Marcus & Berk Chicago
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Issue: Whether Plaintiffs are entitled to a deduction from gross receipts of receipts from sales of food shipped from outside Texas to Texas storage and distribution facilities and subsequently sold to Texas purchasers. See Tax Code §§ 151.314(a), 171.104, and 171.103(1).

Status: Answer filed.

H.J. Heinz Co. v. Rylander, et al. Cause #99-05828

Franchise Tax; Refund Filed: 05/19/99 Period: 1994 & 1995 Amount: \$384,530 & \$381,167	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez L.G. "Skip" Smith Clark, Thomas & Winters Austin Marilyn A. Wethekam Horwood Marcus & Berk Chicago
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Issue: Whether gross receipts from sale of food products should be included in calculating the earned surplus component of the franchise tax. Whether gross receipts for food shipped from out-of-state to Texas storage and distribution centers should be included in the franchise tax formula. Whether inclusion of receipts from food products in tax formula violates due process, equal protection or equal taxation or the Texas Constitution's prohibition of tax on farm products.

Status: Answer filed.

Harcourt Brace Jovanovich Legal & Professional, HBJ Farm Publications, Psychological Corp., Drake Beam Morin, Inc. and Holt Rinehart & Winston, Inc. v. Sharp, et al. Cause #97-03795

Franchise Tax; Protest and Declaratory Judgment Filed: 03/28/97 Period: 1987-1990 1989-1991 1988-1991 Amount: \$243,469 (total of all)	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Jess M. Irwin, III Steven D. Moore Jackson & Walker Austin
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Issue: Whether intercompany payable account obligations should have been excluded from debt for purposes of calculating franchise tax. Attorneys fees.

Status: Discovery in progress.

Harnischfeger Corp. v. Sharp, et al. Cause #95-15706

Franchise Tax; Protest Filed: 12/21/95 Period: 1989-1991 Amount: \$19,045	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo L. G. "Skip" Smith Clark, Thomas & Winters Austin
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Issue: Whether Plaintiff's obligation to pay its employees post-retirement benefits is "debt" for franchise tax purposes.

Status: Defendants' Motion to Dismiss for Want of Prosecution filed.

House of Lloyd, Inc. v. Sharp, et al. Cause #95-06985

Franchise Tax; Refund Filed: 06/05/95 Period: 1989-1991 Amount: \$19,825	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Fred O. Marcus Horwood, Marcus & Braun Chicago David E. Cowling Jones, Day, Reavis & Pogue Dallas
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Issue: Whether the Texas franchise tax is a tax imposed on or measured by net income for purposes of Public Law 86-272; if so, Plaintiff contends that it is not subject to the Texas franchise tax. Whether Plaintiff is doing business in Texas. Whether post-retirement benefits should be included in taxable surplus.

Status: Discovery in progress. Amended Answer and Motions filed.

House of Lloyd, Inc. v. Sharp, et al. Cause #95-06986

Franchise Tax; Refund
Filed: 06/05/95
Period: 1992
Amount: \$106,136

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Fred O. Marcus
Horwood, Marcus &
Braun
Chicago

David E. Cowling
Jones, Day, Reavis &
Pogue
Austin

Issue: Whether the Texas franchise tax is a tax imposed on or measured by net income for purposes of Public Law 86-272; if so, Plaintiff contends that it is not subject to the Texas franchise tax. Whether Plaintiff is doing business in Texas. Whether post-retirement benefits should be included in taxable surplus.

Status: Discovery in progress. Amended Answer and Motions filed.

Houston Industries, Inc. v. Sharp, et al. Cause #98-11344

Franchise Tax; Refund
Filed: 10/08/98
Period: 01/01/93-10/08/93
Amount: \$1,676,116

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Gerard A. Desrochers
Baker & Botts
Houston

Issue: Plaintiff challenges franchise "additional" tax imposed on a company that merged into Plaintiff and ceased to exist, on the grounds that the tax discriminates under state and federal equal taxation provisions.

Status: Discovery suspended to await decision in *3 Beall Brothers 3*, Cause No. 97-05710.

Kraft Foods, Inc. v. Rylander, et al. Cause #99-05522

Franchise Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Christine Monzingo
Filed: 05/12/99	Plaintiff's Counsel:	Gilbert J. Bernal, Jr.
Period: 1994		James F. Martens
Amount: \$1,257,944.51		Stahl, Martens & Bernal Austin

Issue: Whether imposition of the additional tax after Plaintiff's merger violates the commerce clause, due process, equal protection or equal taxation. Whether Plaintiff may recover attorneys' fees.

Status: Answer filed.

LTV Steel Co., Inc. v. Sharp, et al. Cause #97-02822

Franchise Tax; Refund	Asst. AAG Assigned:	Christine Monzingo
Filed: 03/07/97	Plaintiff's Counsel:	Michael V. Powell
Period: 1988-1991		Locke Purnell Rain
Amount: \$337,869		Harrell Dallas

Issue: Whether a liability payable to the Pension Benefit Guaranty Corp. pursuant to ERISA is a debt for franchise tax purposes. Whether §171.109 (a) of the Tax Code is preempted by ERISA.

Status: Discovery in progress.

May Department Stores Co., The v. Sharp, et al. Cause #98-06899

Franchise Tax; Refund	Asst. AAG Assigned:	Christine Monzingo
Filed: 06/26/98	Plaintiff's Counsel:	L. G. "Skip" Smith
Period: 1991-1995		Clark, Thomas & Winters
Amount: \$207,375		Austin

Issue: Whether Plaintiff's officer and director compensation should be added to taxable surplus for franchise tax purposes.

Status: Discovery in progress.

MCorp v. Sharp, et al. Cause #93-11603

Franchise Tax; Refund Filed: 09/28/93 Period: 1985 & 1986 Amount: \$489,667	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson Cynthia M. Ohlenforst Jill B. Scott Hughes & Luce Dallas & Austin
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Issue: Whether Plaintiff may deduct from its surplus the pre-acquisition earnings of certain acquired subsidiaries.

Status: Inactive. Plaintiff in bankruptcy.

Nabisco, Inc. and Planters/Lifesavers v. Sharp, et al. Cause #03-98-00399-CV

Franchise Tax; Protest & Refund Filed: 07/21/97 Period: 1989-1991 Amount: \$2,155,572 \$51,416 \$1,009,239	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Donald L. Stuart Drenner & Stuart Austin Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin
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Issue: Whether Plaintiffs are entitled to a deduction from gross receipts of receipts from sales of food shipped from outside Texas to Texas storage and distribution facilities and subsequently sold to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: Trial held 06/08/98. Court ruled for State 06/23/98. Notice of Appeal filed. Court of Appeals affirmed 05/06/99. Review filed in Supreme Court 06/18/99. Response due 07/16/99.

Network Security Acceptance Corp., as Successor in Interest to Network Security Corp. v. Sharp, et al. Cause #95-15698

Franchise Tax; Protest Filed: 12/21/95 Period: 1986-1987 Amount: \$355,619	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo David E. Cowling Jones, Day, Reavis & Pogue Dallas
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Issue: Whether acquisition debt incurred by an acquiring corporation must be pushed down to the acquired corporation.

Status: Discovery in progress.

North Star Steel Texas, Inc. v. Sharp, et al. Cause #98-12019

Franchise Tax; Refund Filed: 10/23/98 Period: 1992-1995 Amount: \$725,830	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo James F. Martens Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin
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Issue: Whether Comptroller properly interpreted throwback rule for purposes of gross receipts apportionment factor.

Status: Discovery in progress.

Ore-Ida Foods, Inc. v. Sharp, et al. Cause #98-10928

Franchise Tax; Protest Filed: 09/28/98 Period: 1992-1995 Amount: \$744,167	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo L. G. "Skip" Smith Clark, Thomas & Winters Austin Marilyn A. Wethekam Horwood Marcus & Berk Chicago
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Issue: Whether Plaintiffs are entitled to a deduction from gross receipts of receipts from sales of food shipped from outside Texas to Texas storage and distribution facilities and subsequently sold to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: Answer filed.

Ore-Ida Foods, Inc. v. Sharp, et al. Cause #98-12747

Franchise Tax; Protest Filed: 11/12/98 Period: 1992-1994 Amount: \$14,050	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo L. G. "Skip" Smith Clark, Thomas & Winters Austin Marilyn A. Wethekam Horwood Marcus & Berk Chicago
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Issue: Whether Plaintiffs are entitled to a deduction from gross receipts of receipts from sales of food shipped from outside Texas to Texas storage and distribution facilities and subsequently sold to Texas purchasers. See Tax Code §§ 151.314(a), 171.104, and 171.103(1).

Status: Answer filed.

Ore-Ida Foods, Inc. v. Rylander, et al. Cause #99-05827

Franchise Tax; Refund Filed: 05/19/99 Period: 1994 & 1995 Amount: \$324,051 & \$90,910	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez L.G. "Skip" Smith Clark, Thomas & Winters Austin Marilyn A. Wethekam Horwood Marcus & Berk Chicago
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Issue: Whether gross receipts from sale of food products should be included in calculating the earned surplus component of the franchise tax. Whether inclusion of receipts from food products in tax formula violates due process, equal protection or equal taxation or the Texas Constitution's prohibition of tax on farm products.

Status: Answer filed.

Palais Royal, Inc. and 3 Beall Brothers 3, Inc. v. Sharp, et al. Cause #96-03719

Franchise Tax; Protest Filed: 4/1/96 Period: 1992-1993 (3 Beall) 1992-1995 (Palais) Amount: \$700,974	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Mark W. Eidman Scott, Douglass & McConnico Austin
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Issue: Whether the 1991 Franchise Tax Statute is unconstitutionally retroactive.

Status: Discovery in progress. Plaintiff's Motion to Consolidate with *3 Beall Brothers 3* denied.

Peter Scalamandre & Sons, Inc. et al. v. Sharp, et al. Cause #95-01183

Franchise Tax; Protest Filed: 01/31/95 Period: 06/92-12/94 Amount: \$2,465	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Susan E. Potts Brown & Potts Dallas Mark Gibbons Olson, Gibbons, Sartain, Nicoud, Birne & Sussman Dallas
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Issue: Whether Plaintiff is exempt from franchise tax as a "corporation engaged solely in the business of recycling sludge" per §171.085 of the Tax Code.

Status: Inactive.

Phillips Petroleum Co. v. Sharp, et al. Cause #92-11027

Franchise Tax; Refund Filed: 07/30/92 Period: 1988 - 1989 Amount: \$1,161,407	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson L. G. "Skip" Smith Clark, Thomas & Winters Austin
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Issue: Write-down v. write-off of investment in subsidiaries and exclusion of loss from surplus.

Status: Answer filed.

Phillips Petroleum Co. v. Sharp, et al. Cause #98-10495

Franchise Tax; Refund Filed: 09/17/98 Period: 1991-1992 Amount: \$324,568	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo L. G. "Skip" Smith Clark, Thomas & Winters Austin
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Issue: Write-down v. write-off of investment in subsidiaries and exclusion of loss from surplus.

Status: Discovery in progress.

Pilgrim's Pride Corp. v. Sharp, et al. Cause #96-07172

Franchise Tax; Refund Filed: 06/19/96 Period: 1989-1991 Amount: \$345,156	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Tom Tourtellotte Tourtellotte & Kennon Austin
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Issue: Whether passed audit adjustments should be deducted from taxable surplus; whether amounts due under fixed term leases are excludable from surplus as debt; whether certain other liabilities were incorrectly categorized by the Comptroller as contingent; and whether shorter service lives of depreciable assets should be used in calculating franchise tax.

Status: Discovery in progress.

Portion Pac, Inc. v. Sharp, et al. Cause #98-10930

Franchise Tax; Protest
Filed: 09/28/98
Period: 1992-1995
Amount: \$192,869

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

L. G. "Skip" Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chicago

Issue: Whether Plaintiffs are entitled to a deduction from gross receipts of receipts from sales of food shipped from outside Texas to Texas storage and distribution facilities and subsequently sold to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: Answer filed.

Portion Pac, Inc. v. Sharp, et al. Cause #98-12748

Franchise Tax; Protest
Filed: 11/12/98
Period: 1992-1995
Amount: \$9,192

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

L. G. "Skip" Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chicago

Issue: Whether Plaintiffs are entitled to a deduction from gross receipts of receipts from sales of food shipped from outside Texas to Texas storage and distribution facilities and subsequently sold to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: Answer filed.

Portion Pac, Inc. v. Rylander, et al. Cause #99-05826

Franchise Tax; Refund
Filed: 05/19/99
Period: 1994 & 1995
Amount: \$1,625 &
\$13,750

Asst. AAG Assigned:

Plaintiff's Counsel:

Cecilia Gonzalez

L. G. "Skip" Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chicago

Issue: Whether gross receipts from sale of food products should be included in calculating the earned surplus component of the franchise tax. Whether inclusion of receipts from food products in tax formula violates due process, equal protection or equal taxation or the Texas Constitution's prohibition of tax on farm products.

Status: Answer filed.

Reichhold Chemicals, Inc. v. Sharp, et al. Cause #96-03504

Franchise Tax; Protest
Filed: 3/26/96
Period: 1989-1991
Amount: \$193,007

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

Kenneth M. Horwitz
Vial, Hamilton, Koch &
Knox
Dallas

Issue: Whether certain liability accounts that Plaintiff states were established in accordance with FASB No. 38 were erroneously included in taxable surplus by the Comptroller.

Status: Court set Motion to Dismiss for Want of Prosecution 06/29/99. Plaintiff filed Motion to Retain case on Docket 06/29.99.

Richland Development Corp. v. Comptroller, et al. Cause #96-09117

Franchise Tax; Protest
Declaratory Judgment
Filed: 08/01/96
Period: 1989-1991
Amount: \$1,031,003

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

Gerard A. Desrochers
Baker & Botts
Houston

Issue: Whether reimbursements to a subsidiary for services procured by the sub for the parent from third parties should be included in gross receipts. The reimbursements include wages, rent, and supplies, in addition to actual payments to third parties. Also, whether post-retirement benefits should be included in surplus.

Status: Answer filed.

Saudi Refining, Inc. v. Rylander, et al. Cause #99-04227

Franchise Tax; Refund/Protest Filed: 04/09/99 Period: 1994-1995 Amount: \$502,834.84 & \$190,000.58	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson Ira A. Lipstet Therese L. Surprenant Jenkins & Gilchrist Austin
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Issue: Whether Plaintiff may take franchise tax credit as a joint venture partner for equipment sales taxes paid by the joint venture.

Status: Answer filed.

Sergeant Enterprises, Inc. v. Sharp, et al. Cause #96-15475

Franchise Tax; Refund Filed: 12/31/96 Period: 1995 Amount: \$42,968	Asst. AAG Assigned: Plaintiff's Counsel:	Jim Cloudt Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether a business loss carryforward can be transferred to another corporation by way of merger and whether Rule 3.555 prohibiting such a transfer is applicable to audit periods before the effective date of the rule.

Status: Discovery in progress.

Shaklee Corp. d/b/a Shaklee U.S., Inc. v. Sharp, et al. Cause #96-06767

Franchise Tax; Refund Filed: 6/10/96 Period: 1992-1993 Amount: \$10,261	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo David E. Cowling Charlotte Noel Jones, Day, Reavis & Pogue Dallas
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Issue: Whether Plaintiff's officer and director compensation should be added to taxable surplus for franchise tax purposes.

Status: Discovery in progress. Court set Motion to Dismiss for Want of Prosecution 07/22/99.

Southern Union Co. v. Sharp, et al. Cause #95-00677

Franchise Tax; Refund Filed: 01/18/95 Period: 1988-1990 Amount: \$573,449	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo David E. Cowling Sheryl S. Scovell Jones, Day, Reavis & Pogue Dallas
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Issue: Whether a company may retroactively change from 30 to 20 year service lives and from 15% to zero salvage value in computing depreciation.

Status: Discovery in progress. Amended Answer and Motions filed.

Southern Union Co. v. Sharp, et al. Cause #97-01622

Franchise Tax; Protest Filed: 02/11/97 Period: 1991-1993 Amount: \$217,183	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo David E. Cowling Sheryl S. Scovell Jones, Day, Reavis & Pogue Dallas
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Issue: Whether Plaintiff should be allowed to depreciate its “distribution plant assets” over a less than thirty-year life with zero salvage value. Whether post-retirement benefits are a “debt.” If included in surplus, is preemption provision of ERISA violated?

Status: Discovery in progress.

Southern Pacific Transportation Co. and St. Louis Southwestern Railway Co. v. Sharp Cause #96-11071

Franchise Tax; Protest Filed: 09/13/96 Period: 1990-1993 Amount: \$779,952 (Southern Pacific) \$171,733 (St. Louis)	Asst. AAG Assigned: Plaintiff's Counsel:	Jim Cloudt Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether push-down accounting may be used.

Status: Discovery in progress.

Southwestern Explosives, Inc. v. Bullock, et al. Cause #426,164

Franchise Tax; Protest Filed: 09/04/87 Period: 01/01/81 - 12/31/84 Amount: \$40,324	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne David E. Cowling Jones, Day, Reavis & Pogue Dallas
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Issue: Must a dividend be declared to be deductible from surplus? Is Rule 3.405 unconstitutional?

Status: Inactive.

Southwestern Bell Telephone Co. v. Sharp, et al. Cause #98-06783

Franchise Tax; Refund Filed: 06/24/98 Period: 1991-1994 Amount: \$1,300,000	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether officer and director compensation should be added back to earned surplus before calculating franchise tax. Whether the franchise tax statute requires that depreciation be calculated based on the IRS Code of 1986 in effect for calendar year 1990.

Status: Discovery in progress.

Southwestern Bell Yellow Pages, Inc. v. Sharp, et al. Cause #95-15015

Franchise Tax; Protest & Refund Filed: 12/01/95 Period: 1989-1991 Amount: \$397,682	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Whether Plaintiff's operating lease obligations for report year 1991 should be excluded from surplus. Whether Plaintiff's liabilities for employee bonus and incentive awards and post-retirement health, dental, life, and telephone benefits should be excluded from surplus as "debt."

Status: Answer filed. Hearing on Motion to Dismiss for Want of Prosecution 08/02/99.

Southwestern Public Service Co. v. Sharp, et al. Cause #93-01752

Franchise Tax; Refund Filed: 02/12/93 Period: 1988-1991 Amount: \$1,215,015	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Whether minimum operating lease obligations may be deducted from surplus as debt. Whether Plaintiff may exclude from surplus AFUDC accounts (equity capital to finance construction projects). Does GAAP require different accounting for regulated and non-regulated companies, leading to a *Sage* issue?

Status: Hearing for Defendants' Motion to Dismiss for Want of Prosecution set 08/22/99.

Specialty Retailers, Inc. and 3 Beall Brothers 3, Inc. v. Sharp, et al. Cause #98-01348

Franchise Tax; Refund Filed: 02/06/98 Period: 1993 Amount: \$250,488	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether the 1992 franchise tax on earned surplus is a retroactive tax.

Status: Discovery in progress.

Star-Kist Foods, Inc. v. Sharp, et al. Cause #98-10931

Franchise Tax; Protest Filed: 09/28/98 Period: 1992-1995 Amount: \$311,235	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo L. G. "Skip" Smith Clark, Thomas & Winters Austin Marilyn A. Wethekam Horwood Marcus & Berk Chicago
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Issue: Whether Plaintiffs are entitled to a deduction from gross receipts of receipts from sales of food shipped from outside Texas to Texas storage and distribution facilities and subsequently sold to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: Answer filed.

Star-Kist Foods, Inc. v. Sharp, et al. Cause #98-12749

Franchise Tax; Protest
Filed: 11/12/98
Period: 1992-1995
Amount: \$18,789

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

L. G. "Skip" Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chicago

Issue: Whether Plaintiffs are entitled to a deduction from gross receipts of receipts from sales of food shipped from outside Texas to Texas storage and distribution facilities and subsequently sold to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: Answer filed.

Star-Kist Foods, Inc. v. Rylander, et al. Cause #99-05825

Franchise Tax; Refund
Filed: 05/19/99
Period: 1994
Amount: \$689

Asst. AAG Assigned:

Cecilia Gonzalez

Plaintiff's Counsel:

L.G. "Skip" Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chicago

Issue: Whether gross receipts from sale of food products should be included in calculating the earned surplus component of the franchise tax. Whether inclusion of receipts from food products in tax formula violates due process, equal protection or equal taxation or the Texas Constitution's prohibition of tax on farm products.

Status: Answer filed.

Tesoro Petroleum Corp. v. Sharp, et al. Cause #95-05170-A

Franchise Tax; Refund Filed: 04/27/95	Asst. AAG Assigned:	Christopher Jackson
Period: 1982-1986, & 1987	Plaintiff's Counsel:	Mark W. Eidman Scott, Douglass & McConnico Austin
Amount: \$805,943		

Issue: Whether post-retirement medical benefits should be excluded from surplus for franchise tax purposes. Whether the statute of limitations has run on the 1982-1986 reports.

Status: Post-retirement issue severed and docketed as Cause No. 95-05170-A. Waiting disposition of *Caterpillar*. Remaining issues settled.

Texas Aromatics, Inc. v. Sharp, et al. Cause #94-07680

Franchise Tax; Protest and Declaratory Judgment Filed: 06/23/94	Asst. AAG Assigned:	Christopher Jackson
Period: 02/01/90-12/31/91	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
Amount: \$146,092		

Issue: Plaintiff challenges franchise "additional" tax imposed after Plaintiff merged out of existence, on the grounds that the tax discriminates without a rational basis between fiscal and calendar-year taxpayers, under state and federal equal taxation provisions, and violated the federal commerce clause nexus and fair relation tests.

Status: On hold pending outcome of *3 Beall Brothers 3, Inc. v. Sharp*.

Union Pacific Resources Co. v. Sharp, et al. Cause #94-06275

Franchise Tax; Refund Filed: 5/25/94	Asst. AAG Assigned:	Gene Storie
Period: 1979-1980	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
Amount: \$4,504,137		

Issue: *Sage/Samedan*--every issue. Whether Tax Code statutes of limitations bar refund claims for report years 1979-80.

Status: Amended answer with affirmative defense of limitations filed. Settlement pending.

Union Pacific Resources Co. v. Sharp, et al. Cause #95-02334

Franchise Tax; Refund Filed: 02/24/95 Period: 1988-1991 Amount: \$1,432,851	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether various liabilities should be deducted from surplus as debt, including post-retirement benefits, long-term lease obligations, long-term contractual commitments, and liabilities from ongoing litigation. Also, whether the Tax Code is preempted by ERISA.

Status: Answer filed. Settlement negotiations ongoing.

United Beverage Co. v. Rylander, et al. Cause #99-02370

Franchise Tax; Protest Filed: 03/01/99 Period: 01/01/98-12/31/98 Amount: \$1,077,434	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Glen A. Rosenbaum James D. Penny Tobey D. Blanton Wade Anderson Vinson & Elkins Houston
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Issue: Whether the additional tax under 171.0011 is an unconstitutional violation of the commerce clause, due process, due course of law, equal protection, equal taxation and is an unconstitutional retroactive income tax.

Status: Answer filed.

Universal Frozen Foods Co., its Successors-in-Interest, Conagra, Inc. and Lamb Weston, Inc., and Universal Foods Corp. v. Sharp, et al. Cause #98-01956

Franchise Tax; Protest Filed: 02/23/98	Asst. AAG Assigned:	Christine Monzingo
Period: 01/01/98-07/31/94 Amount: \$613,229	Plaintiff's Counsel:	Ira Lipstet Mary E. Haught Jenkins & Gilchrist Austin

Issue: Whether the "Additional Tax" in §171.0011 is illegal income tax because franchise tax can be imposed only on the privilege of doing business in Texas. Whether the Additional Tax violates other constitutional provisions. Whether a gain on the sale of one Plaintiff's stock from it's parent to another company was improperly included in taxable earned surplus for the purpose of calculating the Additional Tax. Whether Rule 3.557(e)(10) is beyond the scope of §171.110 and therefore exceeds the Comptroller's authority. Whether Rule 3.557 is unconstitutional.

Status: Discovery in progress.

Upjohn Co., The v. Sharp, et al. Cause #98-03809

Franchise Tax; Protest Filed: 04/10/98	Asst. AAG Assigned:	Cecilia Gonzalez
Period: 1991-1994 Amount: \$1,391,740	Plaintiff's Counsel:	Ira A. Lipstet Jenkins & Gilchrist Austin

Issue: Whether the exclusion from Texas receipts of receipts from the sale of health care supplies found in §171.104 is restricted to the calculation of taxable capital or whether it extends to the calculation of tax on earned surplus.

Status: Discovery in progress. Tentative trial setting 08/30/99.

USX Corp. v. Sharp, et al. Cause #94-04991

Franchise Tax; Refund Filed: 4/28/94	Asst. AAG Assigned:	Christine Monzingo
Period: 1988-1991 Amount: \$2,594,285	Plaintiff's Counsel:	Glen A. Rosenbaum Vinson & Elkins Houston

Issue: Whether post-retirement benefits are a “debt.” If included in surplus, is preemption provision of ERISA violated?

Status: Defendants’ Motion to Dismiss for Want of Prosecution set 08/02/99.

Weight Watchers Food Co. v. Sharp, et al. Cause #98-10927

Franchise Tax; Protest Filed: 09/28/98 Period: 1992-1995 Amount: \$122,677	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo L. G. "Skip" Smith Clark, Thomas & Winters Austin Marilyn A. Wethekam Horwood Marcus & Berk Chicago
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Issue: Whether Plaintiffs are entitled to a deduction from gross receipts of receipts from sales of food shipped from outside Texas to Texas storage and distribution facilities and subsequently sold to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: Answer filed.

Weight Watchers Gourmet Food Co. v. Rylander, et al. Cause #99-05829

Franchise Tax; Refund Filed: 05/19/99 Period: 1994 Amount: \$62,417	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez L.G. “Skip” Smith Clark, Thomas & Winters Austin Marilyn A. Wethekam Horwood Marcus & Berk Chicago
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Issue: Whether gross receipts from sale of food products should be included in calculating the earned surplus component of the franchise tax. Whether gross receipts for food shipped from out-of-state to Texas storage and distribution centers should be included in the franchise tax formula. Whether inclusion of receipts from food products in tax formula violates due process, equal protection or equal taxation or the Texas Constitution’s prohibition of tax on farm products.

Status: Answer filed.

West Texas Gas, Inc. v. Sharp, et al. Cause #93-01245

Franchise Tax; Protest Filed: 02/02/93 Period: 1988 - 1990 Amount: \$111,761	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson Jasper G. Taylor, III Robert F. Corrigan, Jr. Fulbright & Jaworski Houston
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Issue: Whether the difference between an advance to the sole shareholder and the amount of a promissory note could be deducted from surplus as a reduction in stockholder's equity. In the alternative, was it a write-off of a permanent decline in value of an asset or a write-down?

Status: Answer filed.

***Westcott Communications, Inc., Law Enforcement Television Network, Inc.,
Westcott ECI, Inc. and TI-IN Acquisition Corp. v. Sharp, et al.*** Cause #98-14049

Franchise Tax; Protest Filed: 12/17/98 Period: 01/01/92-12/31/94 Amount: \$1,182,242.67	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Mark W. Eidman Ray Langenberg Steve Wingard Scott, Douglass & McConnico Austin
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Issue: Whether apportionment of satellite service gross receipts to Texas violates the commerce, due process or equal protection clauses of the Constitution or the Tax Code and Comptroller rules apportioning receipts to the state where a service is performed. Alternatively, whether interest should be waived.

Status: Discovery in progress.

Wheelabrator Corp., The and Swindell Dressler Leasing Co. v. Sharp, et al.
Cause #98-00942

Franchise Tax; Protest Filed: 01/23/98 Period: 1990-1993 Amount: \$38,482 \$473,678	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez Gilbert J. Bernal, Jr. James F. Martens Stahl, Martens & Bernal Austin
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Issue: Whether intercompany payable account obligations should have been excluded from debt for purposes of calculating franchise tax.

Status: Discovery in progress.

Xerox Credit Corp. v. Rylander, et al. Cause #99-06232

Franchise Tax; Protest

Filed: 05/28/99

Period: 1992-1999

Amount: \$2,290,821.39

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

James F. Martens

Gilbert J. Bernal, Jr.

Stahl, Martens & Bernal

Austin

Issue: Whether inter-company receivables were improperly allocated to Texas contrary to the “location of payor” rule. Whether the receivables should have been treated as a loan. Whether non-Texas capital gains were improperly offset by capital losses inconsistently with apportionment provisions of the franchise tax. Whether taxpayer had constitutional nexus with Texas. Whether taxpayer was denied equal protection. Whether interest and penalty should be waived. Taxpayer also seeks declaratory judgment and attorneys’ fees.

Status: Answer filed.

Sales Tax

Abbassinezhad, Akbar v. Rylander, et al. Cause #99-03696

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Jim Cloudt
Filed: 03/29/99	Plaintiff's Counsel:	Max J. Luther, III
Period: 01/01/93-09/30/96		Max J. Luther, III, P.C. & Associates
Amount: \$50,061.22		Corpus Christi

Issue:

Status: Answer filed.

Alpine Industries, Inc. v. Sharp, et al. Cause #98-12998

Sales Tax; Protest	Asst. AAG Assigned:	Blake Hawthorne
Filed: 11/20/98		
Period: 1994-1998	Plaintiff's Counsel:	Stephen D. Good
Amount: \$31,128.62		Gregory A. Harwell
		Gardere & Wynne
		Dallas

Issue: Whether Alpine may be regarded as a seller for direct sales made in Texas by independent dealers and whether holding Alpine liable for sales tax violates the commerce clause, due process or equal protection.

Status: Discovery in progress.

American Oil Change Corp. v. Rylander, et al. Cause #99-06374

Sales Tax; Protest	Asst. AAG Assigned:	Christopher Jackson
Filed: 06/03/99		
Period: 1992-1993	Plaintiff's Counsel:	Gerard A. Desrochers
Amount: \$467,142.31		Baker & Botts
		Houston
		Jennifer K. Patterson
		Baker & Botts
		Austin

Issue: Whether materials are provided by Plaintiff to its customers in the course of its motor vehicle repairs under lump sum contracts, requiring Plaintiff to pay tax on the cost of materials. If Plaintiff's contracts are lump sum, whether Plaintiff is entitled to credit for tax collected from its customers and remitted to the Comptroller. Whether software services are taxable when the seller of the services contributes rather than sells the software itself. Whether software services are exempt under §151.346 as sales between affiliated entities of previously exempt services. Whether interest should have been waived. Whether any of the above issues result in a denial of equal protection, equal and uniform taxation or due process under the federal and state constitutions.

Status: Answer filed.

American Standard, Inc. v. Sharp, et al. Cause #92-14483

Sales Tax; Refund Filed: 10/13/92	Asst. AAG Assigned:	Cecilia Gonzalez
Period: 01/01/90-12/31/90	Plaintiff's Counsel:	Judy M. Cunningham Attorney at Law Austin
Amount: \$17,486		

Issue: Whether conveyor belts are exempt machinery and equipment; unequal taxation; long-standing policy.

Status: Answer filed.

American Telephone & Telegraph Co. v. Sharp, et al. Cause #98-06401

Sales Tax; Protest Filed: 06/15/98	Asst. AAG Assigned:	Jim Cloudt
Period: 01/01/84-12/31/89	Plaintiff's Counsel:	Jasper G. Taylor, III Fulbright & Jaworski Houston
Amount: \$8,024,506		

Issue: Whether the Comptroller's Office met its burden of proof with respect to the items assessed tax in Exams 9, 10, 12, 13, and 17. Whether Plaintiff's private line services are taxable telecommunications services and, if so, whether they were not subject to tax before 04/01/88.

Status: Answer filed.

Aramis Services, Inc. v. Sharp, et al. Cause #98-03527

Sales Tax; Protest Filed: 04/03/98 Period: 04/01/90-03/31/94 Amount: \$291,196	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson David E. Cowling Jones, Day, Reavis & Pogue Dallas
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Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed.

Status: Answer filed.

Arco Chemical Co. v. Sharp, et al. Cause #96-01027

Sales Tax; Refund Filed: 01/26/96 Period: 1990 Amount: \$240,160	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson L. G. "Skip" Smith Clark, Thomas & Winters Austin
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Issue: Whether piping, electric equipment, and concrete stands are exempt as manufacturing equipment in the manufacture of propylene oxide, tertiary butyl alcohol and styrene monomer.

Status: Attempting to settle case in view of *Chevron* decision allowing manufacturing exemption for pipe in addition to audit years 1991-93, which are not part of this suit.

Baldry, Ann d/b/a Annie's Housekeeping Services v. Sharp, et al. Cause #95-02389

Sales Tax; Declaratory Judgment Filed: 2/27/95 Period: 04/01/88-06/30/92 Amount: \$63,588	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Alvin L. Thomas, II Littler, Mendleson & Fastiff Houston
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Issue: Whether sales tax is due on maid services provided by maids placed by Plaintiff's service but acting as independent contractors. Also, whether Plaintiff relied, to her detriment, on advice from the Comptroller's office.

Status: Inactive.

Bell Bottom Foundation Co. v. Rylander, et al. Cause #99-01092

Sales Tax; Protest Filed: 01/29/99	Asst. AAG Assigned:	Cecilia Gonzalez
Period: 01/01/91-12/31/94 Amount: \$81,571.73	Plaintiff's Counsel:	Timothy M. Trickey The Trickey Law Firm Austin

Issue: Whether taxpayer's sub-contract was a separated contract since the general contractor's construction contract was separated.

Status: Answer filed.

BHC Co. v. Sharp, et al. Cause #95-13037

Sales Tax; Protest Filed: 10/13/95	Asst. AAG Assigned:	Blake Hawthorne
Period: 05/01/90-04/30/94 Amount: \$114,532	Plaintiff's Counsel:	Richard Flint Pearson & Price Corpus Christi

Issue: Plaintiff contends that it is providing a single, integrated service, the management and operation of a manufacturing facility, which service is not taxable. Plaintiff contests the Comptroller's assessment of tax on maintenance charges, which Plaintiff considers to be one component of an "integrated non-taxable service."

Status: Discovery in progress.

B.I. Moyle Associates, Inc. v. Rylander, et al. Cause #99-00907

Sales Tax; Protest Filed: 01/26/99	Asst. AAG Assigned:	Christopher Jackson
Period: 04/01/91-03/31/95 Amount: \$51,711.94	Plaintiff's Counsel:	G. Stewart Whitehead Winstead, Sechrest & Minick Austin

Issue: Whether taxpayer has substantial nexus with Texas to support imposition of sales and use taxes on its software licensed to Texas residents.

Status: Answer filed.

Big Tex Air Conditioning, Inc. v. Bullock, et al. Cause #486,321

Sales Tax; Protest Filed: 6/26/90 Period: 04/01/85-07/31/88 Amount: \$181,397	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez John W. Berkel Houston
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Issue: Detrimental reliance and various allegations of unconstitutional enforcement; statute of limitations.

Status: Some discovery done. Inactive.

Brighton Builders, Inc. v. Sharp, et al. Cause #97-11830

Sales Tax; Protest Filed: 10/15/97 Period: 10/01/92-09/30/95 Amount: \$195,368	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson Ray Langenberg Scott Douglass & McConnico Austin
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Issue: Whether certain real property services, such as landscaping and construction site cleanup, are taxable.

Status: Discovery near completion.

Brown, William A. d/b/a Nortex Investigative Services v. Sharp, et al. Cause #96-06158

Sales Tax; Declaratory Judgment & Injunction Filed: 05/29/96 Period: 01/01/90-12/31/93 Amount: \$30,992	Asst. AAG Assigned: Plaintiff's Counsel:	James Parsons Gary L. Waite Attorney at Law Paris
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Issue: Whether Plaintiff is liable for sales tax on its security services. Whether Plaintiff relied to its detriment on erroneous advice from the Comptroller.

Status: Answer and plea to the jurisdiction filed. Discovery in progress. Motion for Summary Judgment heard and granted 02/25/99. Waiting for order to be signed.

Capital Guidance Associates IV v. Sharp, et al. Cause #97-06501

Sales Tax; Protest Filed: 06/03/97	Asst. AAG Assigned:	Blake Hawthorne
Period: 07/01/90-03/31/94 Amount: \$39,882	Plaintiff's Counsel:	Tom Tourtellotte Tourtellotte & Kennon Austin

Issue: Claim for refund under prior contract exemption and Rule 3.319, as it was in effect until 1992. Whether the Comptroller could pass a rule contrary to Rule 3.319 and apply it retroactively. Issue involves exemption for two-party vs. three-party contracts and a policy change.

Status: Discovery in progress.

Central Power & Light Co. v. Sharp, et al. Cause #96-11455

Sales Tax; Refund Filed: 09/20/96	Asst. AAG Assigned:	Cecilia Gonzalez
Period: 07/01/86-12/31/89 Amount: \$32,788	Plaintiff's Counsel:	L. G. "Skip" Smith Clark, Thomas & Winters Austin

Issue: Whether utility pole replacement services are non-taxable maintenance or taxable repair labor.

Status: Discovery in progress.

Chevron Chemical Co. v. Rylander, et al. Cause #99-06650

Sales Tax; Refund Filed: 06/09/99	Asst. AAG Assigned:	Walter Dean
Period: 12/31/88-06/30/92 Amount: \$624,887.13	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Curtis J. Osterloh Scott, Douglass & McConnico Austin

Issue: Whether installation of Plaintiff's extruder was non-taxable new construction. Whether any taxable modification of real property was less than 5% of the total charge. Alternatively, whether demolition and construction management services were non-taxable unrelated services. Whether security services were non-taxable property management services. Whether services performed by Brown & Root and Industrial Technicians qualified as non-taxable employee services.

Status: Answer filed.

Cinco Hermanos, Inc. v. Sharp, et al. Cause #97-13533

Sales Tax; Protest Filed: 12/04/97	Asst. AAG Assigned:	Christopher Jackson
Period: Not stated Amount: \$70,153	Plaintiff's Counsel:	Timothy M. Trickey The Trickey Law Firm Austin

Issue: Whether export certificates accepted by a seller that are dated before or more than 30 days after the purchase in question are invalid on their face or merely raise a presumption of non-export.

Status: Trial set for 08/30/99.

Clinique Services, Inc. v. Sharp, et al. Cause #98-03533

Sales Tax; Protest Filed: 04/03/98	Asst. AAG Assigned:	Christopher Jackson
Period: 04/01/90-03/31/94 Amount: \$519,192	Plaintiff's Counsel:	David E. Cowling Jones, Day, Reavis & Pogue Dallas

Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed.

Status: Answer filed.

Coastal Refining & Marketing, Inc. v. Sharp, et al. Cause #98-03540

Sales Tax; Protest Filed: 04/03/98 Period: 01/01/89-06/30/89 07/01/89-12/31/91 Amount: \$1,635,965	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Jasper G. Taylor, III Fulbright & Jaworski Houston Joe W. Cox Coastal States Management Corp. Houston
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Issue: Whether certain work performed by Plaintiff is new construction under a lump sum contract and thus not taxable.

Status: Discovery in progress.

Commercial Janitorial Services, Inc. v. Sharp, et al. Cause #95-03259

Sales Tax; Declaratory Judgment and Injunction Filed: 3/17/95 Period: 10/89 - 06/93 Amount: \$115,160	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Samuel Downing McDaniel Attorney at Law Austin Sam Passman Passman & Jones Dallas
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Issue: Whether fraud penalty should have been assessed. Whether the Comptroller should be enjoined from collecting the tax while this suit is pending.

Status: Discovery in progress.

Computer Systems of America, Inc. v. Sharp, et al. Cause #96-15311

Sales Tax; Protest Filed: 12/23/96 Period: 12/01/87-10/31/92 Amount: \$51,956	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Gregory E. Perry Attorney at Law Austin, Texas
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Issue: Whether penalty and interest should have been waived by the Comptroller on the audit liability.

Status: Discovery in progress. Tentatively scheduled for mediation.

Continental Drilling Co., Inc. (Now Known as Samson Natural Gas Co.) v. Sharp, et al. Cause #94-12881

Sales Tax; Protest Filed: 10/13/94 Period: 04/01/88-03/31/91 Amount: \$502,859	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Jasper G. Taylor, III Fulbright & Jaworski Houston
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Issue: Sales tax was assessed on the sales of twelve drilling rigs. Plaintiff contends the sales were occasional sales and/or sales for resale; also, Plaintiff alleges that the assessments were outside the statute of limitations.

Status: Settled as to eight rigs. Settlement pending on remaining rigs.

Dallas SMSA Partnership v. Sharp, et al. Cause #97-09713

Sales Tax; Refund Filed: 08/22/97 Period: 01/89-08/31/92 Amount: \$99,349	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether engineering services were part of the sales price of tangible personal property sold to Plaintiff.

Status: Summary Judgment for Plaintiff signed 01/20/99. Appellate brief filed.

Denmon's H2 Safety Services, Inc. v. Sharp Cause #98-10165

Sales Tax; Refund	Asst. AAG Assigned:	Jim Cloudt
Filed: 09/09/98		
Period: 07/01/92-01/31/96	Plaintiff's Counsel:	Judy M. Cunningham
Amount: \$67,366		Attorney at Law
		Austin

Issue: Whether tax is due on a charge for training employees and providing safety supervisors in hydrogen sulfide safety at well sites, where Plaintiff also rented equipment.

Status: Discovery in progress.

El Paso Silverton Construction Co., Inc. v. Sharp, et al. Cause #97-00547

Sales Tax; Refund	Asst. AAG Assigned:	Steve Rodriguez
Filed: 01/15/97		
Period: 01/01/92-06/30/93	Plaintiff's Counsel:	Judy M. Cunningham
Amount: \$6,762		Attorney at Law
		Austin

Issue: Whether §151.311 of the Tax Code, as it existed during the audit period, discriminated against the federal government because it did not exempt purchases of contractors improving federal property while it did exempt purchases by contractors improving state property.

Status: Inactive.

Estee Lauder Services, Inc. v. Sharp, et al. Cause #98-03525

Sales Tax; Protest	Asst. AAG Assigned:	Christopher Jackson
Filed: 04/03/98		
Period: 01/01/89-09/30/92	Plaintiff's Counsel:	David E. Cowling
Amount: \$472,225		Jones, Day, Reavis &
		Pogue
		Dallas

Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed.

Status: Answer filed.

Estee Lauder Services, Inc. v. Sharp, et al. Cause #98-03524

Sales Tax; Protest Filed: 04/03/98 Period: 10/01/98-03/31/96 Amount: \$748,773	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson David E. Cowling Jones, Day, Reavis & Pogue Dallas
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Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed.

Status: Answer filed.

Etan Industries, Inc. v. Sharp, et al. Cause #98-13227

Sales Tax; Protest Filed: 11/25/98 Period: 09/01/92-01/31/96 Amount: \$456,156.99	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson Mark W. Eidman Ray Langenberg Curtis J. Osterloh Scott, Douglass & McConnico Austin
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Issue: Whether debt collection services purchased by Etan in connection with its debt collection services for its clients are exempt as a sale for resale of taxable services.

Status: Discovery in progress.

F.C. Felhaber & Co., Inc. v. Sharp, et al. Cause #97-05061

Sales Tax; Declaratory Judgment Filed: 04/28/97 Period: Not stated Amount: \$0.00	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson Louis S. Zimmerman Fulbright & Jaworski Austin
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Issue: Plaintiff's Texas Custom Broker's License was suspended 120 days. Whether Plaintiff must actually observe exported goods cross the border. Whether the Comptroller's investigation of Plaintiff in connection with Plaintiff's customs broker license was *ultra vires* because a non-employee was used. Whether Plaintiff's constitutional rights were violated.

Status: On hold, pending outcome of *Macias v. Sharp*.

Fiesta Texas Theme Park, Ltd. v. Sharp, et al. Cause #98-02407

Sales Tax; Refund Filed: 03/05/98 Period: 10/01/90-04/30/93 Amount: \$328,829	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez Jasper G. Taylor, III Fulbright & Jaworski Houston
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Issue: Whether prizes awarded by Plaintiff to successful contestants of coin-operated as well as non-coin operated games are purchased for resale. Whether sales tax constitutes double taxation on machines on which occupation tax is paid and on non-coin games, admission to which is taxed. Advertising and sewing services are not taxable.

Status: Discovery in progress.

Fleming Foods of Texas, Inc. v. Sharp, et al. Cause #94-14234
Appellate Cause No. 03-96-00477-CV

Sales Tax; Protest Filed: 11/14/94 Period: 07/01/85-06/30/89 Amount: \$353,874	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez J. Scott Morris Attorney at Law Austin
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Issue: Whether both the taxpayer and its vendor must timely waive the statute of limitations in order to have it kept open for the taxpayer to claim a refund of, or credit for, sales tax paid to the vendor. Also, Plaintiff contends the Comptroller did not initially enforce a new rule concerning tax on janitorial services and that tax voluntarily paid by the taxpayer should be refunded.

Status: Judgment for State signed 05/03/96. Appealed and argued before Court of Appeals. Affirmed 08/28/97. Taxpayer's Motion for Rehearing overruled. Writ (Petition for Review) denied 02/26/98. Motion for rehearing of denial of writ (petition) filed 03/13/98. Granted 09/98. Set for submission 11/18/98. Judgment for Plaintiff. Motion for Rehearing, due 07/09/99, to be filed.

Four G. Asphalt, d/b/a Big Buck Asphalt v. Sharp, et al. Cause #94-13567

Sales Tax; Declaratory Judgment and Injunction Filed: 10/27/94 Period: 02/01/90-09/30/91 Amount: \$24,660.87 plus accrued penalties & interest	Asst. AAG Assigned: Plaintiff's Counsel:	James Parsons Donato D. Ramos Person, Whitworth, Ramos, Borchers & Morales Laredo
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Issue: Plaintiff asserts that the fraud penalty should not have been assessed.

Status: Inactive; attempting to negotiate a dismissal.

Garza, Lawrence v. Sharp, et al. Cause #98-07607

Sales Tax; Protest Filed: 07/17/98 Period: 01/01/93-09/30/95 Amount: \$83,910	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez Stephen P. Dillon Lindeman & Dillon Houston
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Issue: Whether the Comptroller used the proper sampling procedure and whether Plaintiff was correctly notified of the procedure to be used.

Status: Discovery in progress.

Gateway Homes, Inc. v. Sharp, et al. Cause #98-14225

Sales Tax; Protest Filed: 12/22/98 Period: 01/01/91-09/30/95 Amount: \$133,146.26	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Mark W. Eidman Ray Langenberg Paige Arnette Scott, Douglass & McConnico Austin
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Issue: Whether various service activities such as landscaping, cleaning and waste removal are taxable real property services. Whether any tax due is owed by independent contractor service providers under a tax-included contract. Whether tax was assessed on non-taxable new construction. Whether the assessment violates equal protection and whether interest should be waived.

Status: Answer filed.

GATX Terminals Corp. v. Sharp, et al. Cause #96-10815

Sales Tax; Refund Filed: 09/06/96 Period: Not Stated Amount: \$698,491	Asst. AAG Assigned: Plaintiff's Counsel:	Jim Cloudt Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Various real property issues, including: whether repainting operations were repair and remodeling or periodic maintenance; whether the statute of limitations ran on a refund claim, where the statute had run on the vendor; whether work on a metering system was remodeling or new construction; whether Plaintiff is entitled to a refund of city taxes paid to Houston.

Status: Discovery in progress.

GATX Terminals Corp. v. Sharp, et al. Cause #98-13414

Sales Tax; Protest Filed: 12/02/98 Period: 09/01/92-06/30/96 Amount: \$125,330.40	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether certain activities are taxable real property repair and remodeling or non-taxable maintenance and, alternatively, whether penalty and interest should be waived.

Status: Answer filed.

Graybar Electric Co., Inc. v. Sharp, et al. Cause #97-01795

Sales Tax; Protest Filed: 02/13/97 Period: 01/01/88-12/31/91 Amount: \$107,667	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether the sample audit resulted in a correct assessment.

Status: Discovery in progress.

Grocers Supply Co., Inc. v. Sharp, et al. Cause #97-07564

Sales Tax; Protest Filed: 06/30/97 Period: 03/01/89-09/30/92 Amount: \$32,765	Asst. AAG Assigned: Plaintiff's Counsel:	Jim Cloudt Tom Tourtellotte Tourtellotte & Kennon Austin
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Issue: Whether certain resale certificates were accepted in good faith. Whether certain pallets were tax exempt as packaging used in the manufacturing process.

Status: Discovery in progress.

Grocers Supply Co., Inc. v. Sharp, et al. Cause #97-13659

Sales Tax; Refund Filed: 12/09/97 Period: 03/01/89-09/30/97 Amount: \$18,508	Asst. AAG Assigned: Plaintiff's Counsel:	Jim Cloudt Tom Tourtellotte Tourtellotte & Kennon Austin
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Issue: Whether certain pallets were tax exempt as packaging used in the manufacturing process.

Status: Discovery in progress.

H.J. Wilson Co., Inc. v. Sharp, et al. Cause #98-11574

Sales Tax; Protest Filed: 10/13/98 Period: 07/01/90-12/31/93 Amount: \$1,076,019	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson David E. Cowling Jones, Day, Reavis & Pogue Dallas
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Issue: Whether the purchase of sales catalogs printed out of state and shipped to Plaintiff's customers in Texas (at no charge to the customer) incur sales tax.

Status: Answer filed. On hold. Plaintiff filed bankruptcy in Tennessee 03/25/99.

Haber Fabrics Corp. v. Sharp, et al. Cause #96-11802

Sales Tax; Protest Filed: 09/30/96 Period: 01/01/90-11/30/93 Amount: \$84,984	Asst. AAG Assigned: Plaintiff's Counsel:	Jim Cloudt Robert M. Nicoud, Jr. Robert E. Birne Olson Gibbons Sartain Nicoud Birne Sussman & Gueck Dallas
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Issue: Whether wrapping and packaging and purchases of natural gas and electricity were exempt as being used in manufacturing.

Status: Bench Trial heard 01/20/99. Court granted exemptions for packaging, wrapping and electricity, but not natural gas. Defendants' Motion for New Trial is pending. Findings of Fact and Conclusions of Law filed by the Court 03/15/99. Defendant filed Notice of Appeal 05/10/99. Appellant's brief due 07/08/99.

Harrison, Robert v. Sharp, et al. Cause #95-12846

Sales Tax; Refund Filed: 10/09/95 Period: 01/01/89-12/31/92 Amount: \$34,742	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson John McDuff Attorney at Law Austin
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Issue: Whether the auditor correctly estimated the liability when Plaintiff's records were totally destroyed by fire.

Status: Discovery near completion. Preparing No-Evidence Summary Judgment.

Heritage Numismatic Auctions, Inc. & Heritage Capital Corp. v. Rylander, et al.
Cause #99-06186

Sales Tax; Refund Filed: 05/27/99	Asst. AAG Assigned:	Walter Dean
Period: 1993-1995 10/92-03/96	Plaintiff's Counsel:	Brett B. Flagg Brett B. Flagg & Associates Dallas
Amount: \$41,549.31 \$80,179.86		

Issue: Whether inter-company transactions were taxable sale. Whether some audit items were not taxable data processing services. Whether data processing services were exempt inter-company transactions.

Status: Answer and Plea to the Jurisdiction filed.

Herndon Marine Products, Inc. v. Sharp, et al. Cause #91-14786

Sales Tax; Refund Filed: 10/18/91	Asst. AAG Assigned:	Jim Cloudt
Period: 01/01/87 - 03/31/90	Plaintiff's Counsel:	John D. Bell Wood, Boykin & Wolter Corpus Christi
Amount: \$62,465		

Issue: Whether predominant use of electricity from Plaintiff's meter is exempt. Whether burden of proof in administrative hearing should be clear and convincing evidence or preponderance of the evidence.

Status: Special Exceptions and Answer filed.

Hoffer Furniture Rental, Inc. v. Sharp Cause #95-15906

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Blake Hawthorne
Filed: 12/29/95	Plaintiff's Counsel:	L. Don Knight
Period: 01/01/89-10/31/92		Meyer, Knight & Williams
Amount: \$110,665		Houston

Issue: Whether Plaintiff's sales of insurance contracts (to cover damage to furniture it sells or leases) are taxable.

Status: Discovery in progress.

Holzem, Inc. v. Sharp, et al. Cause #96-01041

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Jim Cloudt
Filed: 01/26/96	Plaintiff's Counsel:	Leland C. De La Garza
Period: 07/01/88-03/31/92		De La Garza & Clark
Amount: \$229,930		Dallas

Issue: Whether Plaintiff's activities during the audit period constituted new construction or taxable repair and remodeling. Whether Plaintiff must pre-pay the tax.

Status: Plaintiff's motion to be excused from prepaying tax granted 07/23/96. Discovery in progress. Hearing on Defendants' plea to the jurisdiction denied. State has filed counterclaim.

Houston Arena Theatre, Inc. v. Rylander, et al. Cause #99-03549

Sales Tax; Injunction	Asst. AAG Assigned:	Blake Hawthorne
Filed: 03/24/99	Plaintiff's Counsel:	Wendle Van Smith
Period: 02/01/93-02/29/96		Anderson & Smith
Amount: \$77,736.94		Houston

Issue: Whether taxpayer owes sales tax on shows put on by exempt organizations when tickets indicate that tax is included. Whether taxpayer is entitled to injunctive relief.

Status: Temporary Injunction Hearing held 04/05/99. Denied. Settlement discussions in progress.

Houston Industries Building, Inc. v. Rylander, et al. Cause #99-04219

Sales Tax; Refund Filed: 04/09/99 Period: 10/01/93-03/31/96 Amount: \$960,867.93	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez L.G. "Skip" Smith David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Whether removal of asbestos is an exempt service.

Status: Answer filed.

Interpak Terminals, Inc. v. Sharp, et al. Cause #95-15213

Sales Tax; Protest Filed: 12/07/95 Period: 04/01/89-06/19/95 Amount: \$14,125	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Paul Price Tom Wheat Pearson & Price Corpus Christi
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Issue: Whether Plaintiff is entitled to the exemption for wrapping and packaging materials it uses to package plastic pellets sent to it by the manufacturer of the pellets.

Status: Discovery in progress.

Irv-Tex Coin Laundries, Inc. v. Sharp, et al. Cause #93-01350

Sales Tax; Protest Filed: 02/04/93 Period: 01/88-10/91 Amount: \$25,931	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Jimmy L. Heisz & W. Wade Porter Haynes & Boone Dallas and Austin
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Issue: Taxability of buffer pads, wax, polish, etc. when sold to body shops and new car dealers by way of a separated contract.

Status: Inactive.

Jett Racing and Sales, Inc. v. Sharp, et al. Cause #96-04721

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Jim Cloudt
Filed: 04/25/96	Plaintiff's Counsel:	Judy M. Cunningham
Period: 05/01/88-02/29/92		James D. Blume
Amount: \$105,491		Dallas

Issue: Whether the purchase of an airplane was exempt as a sale for resale.

Status: Discovery in progress.

Kandi Sue, Inc. v. Sharp, et al. Cause #94-14073

Sales Tax; Protest	Asst. AAG Assigned:	Blake Hawthorne
Filed: 11/8/94		
Period: 10/01/91-12/31/91	Plaintiff's Counsel:	Mark Blakemore
Amount: \$7,757		Royston, Razor, Vickery & Williams Brownsville

Issue: Whether the purchase of a shrimp trawler was exempt from tax as an occasional sale (identifiable segment of the business).

Status: Discovery in progress.

Kroger Co., The v. Sharp, et al. Cause #98-05641

Sales Tax; Refund	Asst. AAG Assigned:	Steve Rodriguez
Filed: 05/28/98		
Period: 01/01/90-12/31/93	Plaintiff's Counsel:	Mark W. Eidman
Amount: \$314,704		Ray Langenberg Scott, Douglass & McConnico Austin

Issue: Whether the refuse from Plaintiff's meat and produce departments, floral shops, delicatessens, fast food restaurants, and bakeries qualifies as industrial solid waste under § 151.0048 and Rule 3.356, making its removal exempt from sales tax. Whether the labor to paint Plaintiff's dairy and warehouse facilities is tax exempt maintenance. Whether "pan glazing" is exempt as tangible personal property used or consumed during the manufacture of Kroger baked goods.

Status: Discovery in progress.

Kunz Construction Co., Inc. v. Sharp, et al. Cause #96-10758

Sales Tax; Protest Filed: 09/05/96 Period: 01/01/89-12/31/92 Amount: \$5,915	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Judy Cunningham Attorney at Law Austin
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Issue: Whether a nonprofit, public hospital owned by the federal government is exempt under §151.311 even if it is excluded from the definition of nonprofit hospital in the Health and Safety Code.

Status: Inactive.

L. D. Brinkman & Co., Inc. v. Sharp, et al. Cause #95-06286

Sales Tax; Protest Filed: 05/18/95 Period: 07/01/90-02/28/94 Amount: \$226,413	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Charles L. Perry Arter & Hadden Dallas
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Issue: Plaintiff contends that inventory samples should not have been taxed because they were ultimately sold and tax was collected. Also, whether cardboard rolls and plastic wrapping are exempt under the manufacturing exemption.

Status: Summary Judgment pending.

Lake Charles Yamaha, Inc. v. Sharp Cause #97-05737

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Gene Storie
Filed: 05/13/97	Plaintiff's Counsel:	Russell J. Stutes, Jr.
Period: 04/01/91-03/31/95		Scofield, Gerard, Veron,
Amount: \$150,214		Singletary & Pohorelsky
		Lake Charles, Louisiana

Issue: Plaintiff asserts that it has no nexus with Texas and cannot be assessed sales tax, although it concedes that it delivers merchandise into Texas in its own trucks.

Status: Plaintiff's discovery responses overdue.

Lake Charles Yamaha, Inc. v. Morales, et al. Cause #95-08672

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Gene Storie
Filed: 11/13/95	Plaintiff's Counsel:	Russell J. Stutes, Jr.
Period: 04/01/91-03/31/95		Scofield, Gerard, Veron,
Amount: \$150,214		Singletary & Pohorelsky
		Lake Charles, Louisiana

Issue: Plaintiff asserts that it has no nexus with Texas and cannot be assessed sales tax, although it concedes that it delivers merchandise into Texas in its own trucks. Plaintiff asks for a declaratory judgment and damages/attorneys fees under 42 USC §§1983 and 1988.

Status: Will be dismissed or non-suited pursuant to Lake Charles Music suit.

Lake Charles Yamaha, Inc. v. Morales, et al. Cause #95-3802

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Gene Storie
Filed: 07/11/95	Plaintiff's Counsel:	Russell J. Stutes, Jr.
Period: 04/01/91-03/31/95		Scofield, Gerard, Veron,
Amount: \$150,214		Singletary & Pohorelsky
		Lake Charles, Louisiana

Issue: Plaintiff asserts that it has no nexus with Texas and cannot be assessed sales tax, although it concedes that it delivers merchandise into Texas in its own trucks. Plaintiff asks for a declaratory judgment and damages/attorneys fees under 42 USC §§1983 and 1988.

Status: Will be dismissed or nonsuited pursuant to Lake Charles Music suit.

Laney, James M. v. Sharp, et al. Cause #97-08525

Sales Tax; Declaratory Judgment & Refund Filed: 07/25/97 Period: 10/01/89-07/31/93 Amount: \$91,744	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez Howard V. Rose Brown McCarroll & Oaks Hartline Austin
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Issue: Whether the Comptroller complied with the law governing sample audits. Whether the agreement extending the statute of limitations was timely signed.

Status: Judgment for Defendants.

Laredo Country Club, Inc., A Texas Corp. v. Sharp, et al. Cause #98-11834

Sales Tax; Protest; Declaratory Judgment Filed: 10/20/98 Period: 08/1-30/98 Amount: \$2,054	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez John Christian Foster, Malish & Hill Austin
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Issue: Whether sales tax is due on the portion of country club membership fees designated as "capital improvement fees" and "gratuities."

Status: Plea to the jurisdiction; plea in abatement and Original Answer filed 11/16/98.

Lebaron Hotel Corp., d/b/a The Lebaron Hotel v. Sharp, et al. Cause #91-17399

Sales Tax; Protest Filed: 12/13/91 Period: 10/01/87 - 06/30/90 Amount: \$22,326	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Robert C. Cox Dallas
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Issue: Whether Comptroller could tax an arbitrary percentage of ingredients in complimentary mixed drinks and whether ingredients are exempt because they are taxed elsewhere. Is tax due on repairs to parking lot? Whether purchase of items from Ramada Inn is exempt as entire operating assets of a business or identifiable segment.

Status: Answer filed.

Lee Construction and Maintenance Co. v. Rylander, et al. Cause #99-01091

Sales Tax; Protest Filed: 01/29/99 Period: 01/01/92-12/31/95 Amount: \$31,830.47	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez Timothy M. Trickey The Trickey Law Firm Austin
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Issue: Various issues, including credits for bad debts, tax paid, tax on new construction and tax paid in Louisiana, resale exemptions and waiver of penalty and interest.

Status: Answer filed.

Leyendecker Construction, Inc. v. Sharp, et al. Cause #98-08076

Sales Tax; Protest Declaratory Judgment Injunction Filed: 07/27/98 Period: 08/01/91-04/30/95 Amount: \$215,486.14	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez Donato D. Ramos Baldemar Garcia, Jr. Person, Whiteworth, Ramos, Borchers & Morales Laredo
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Issue: Whether Plaintiff is responsible for sales tax it says it paid to its subcontractors and then collected from its customers as reimbursement. Related evidence issues.

Status: Defendant's Plea to the Jurisdiction and Original Answer filed 08/24/98.

Lopez-Gloria Construction Services, Inc. v. Sharp, et al. Cause #96-07811

Sales Tax; Declaratory Judgment Filed: 07/05/96 Period: 01/01/89-12/31/92 Amount: \$791,171	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson No attorney of record.
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Issue: Plaintiff doesn't owe the tax, and if it does, the Comptroller abused its discretion in not settling under Tax Code §111.102.

Status: On hold. Plaintiff apparently out of business and is pro se.

Lucky Lady Oil Co. v. Rylander, et al. Cause #99-01731

Sales Tax; Protest Filed: 02/12/99 Period: 06/01/88-12/31/91 Amount: \$402,951.08	Asst. AAG Assigned: Plaintiff's Counsel:	Jim Cloudt Timothy M. Trickey The Trickey Law Firm Austin
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Issue: Whether taxpayer's liability for diesel fuels tax was properly computed. Whether the Comptroller should waive penalty and interest.

Status: Discovery in progress.

Macias, David Ronald v. Sharp Cause #96-07543

Sales Tax; Declaratory Judgment Filed: 06/28/96 Period: Not stated Amount: \$	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson Mark N. Osborn Thomas G. Wicker, Jr. Kemp, Smith, Duncan & Hammond El Paso
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Issue: Plaintiff contests the suspension of his Texas Customs Broker License and disagrees with the Comptroller's policy that brokers must actually see goods being exported before affixing their stamps.

Status: State's motion for summary judgment heard 06/10/98. Court ruled for State, upholding license suspension and finding standard of review to be substantial evidence. Notice of appeal filed. Oral Argument occurred 03/24/99. Third Court of Appeals reversed substantial evidence determination and remanded for further proceedings.

Mazanec Construction Co., Inc. v. Sharp, et al. Cause #96-06955

Sales Tax; Refund Filed: 06/14/96 Period: 04/01/90-12/31/93 Amount: \$9,571	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Judy M. Cunningham Attorney at Law Austin
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Issue: Whether construction at a hospital owned by the federal government is exempt.

Status: Summary Judgment to be filed.

Medaphis Physicians Services Corp. v. Sharp, et al. Cause #94-11610

Sales Tax; Protest and Declaratory Judgment Filed: 09/16/94 Period: 05/01/94-06/30/94 Amount: \$17,063	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Gary Miles Sherri Alexander Johnson & Wortley Dallas
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Issue: Whether Plaintiff's services are taxable (1) insurance services, (2) debt collection services, or (3) data processing services, and whether Rules 3.330, 3.354, and 3.355 exceed the Comptroller's rule making authority.

Status: On hold pending conclusion of the audit.

Merico Abatement Contractors, Inc. v. Sharp, et al. Cause #93-15460

Sales Tax; Protest Filed: 12/17/93 Period: 10/01/87-03/31/91 Amount: \$75,379	Asst. AAG Assigned: Plaintiff's Counsel:	Jim Cloudt Ira Lipstet Jenkins & Gilchrist Austin
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Issue: Whether items used for asbestos abatement are exempt from tax. Whether the items are actually resold to Plaintiff's customers and whether they qualify as items used in a pollution control process.

Status: State filed Motion for Summary Judgment 08/07/98. Hearing postponed for further discovery. Discovery in progress.

Movie One Theatres, Inc. v. Sharp, et al. Cause #97-05483

Sales Tax; Protest and Refund Filed: 05/07/97 Period: 01/01/94-12/31/94 09/01/91-12/31/94 Amount: \$258,945	Asst. AAG Assigned: Plaintiff's Counsel:	Jim Cloudt Steven C. Jones Steven C. Jones & Associates El Paso
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Issue: Plaintiff constructed a twelve-screen theater. The Comptroller assessed tax on the labor, which it considered to be real property repair and remodeling. Plaintiff urges that the labor is tax exempt new construction.

Status: Discovery in progress. Trial set for 11/01/99.

National Business Furniture, Inc. v. Sharp, et al. Cause #98-03927

Sales Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Steve Rodriguez
Filed: 04/15/98	Plaintiff's Counsel:	Gilbert J. Bernal, Jr.
Period: 01/01/93-07/31/95		Stahl, Martens & Bernal
Amount: \$68,398		Austin

Issue: Whether promotional materials printed out of state and delivered into Texas are subject to use tax.

Status: Answer filed.

Neiman Marcus Group, Inc. v. Sharp, et al. Cause #93-10279-A

Sales Tax; Protest and Refund	Asst. AAG Assigned:	Christopher Jackson
Filed: 08/26/93	Plaintiff's Counsel:	David E. Cowling
Period: 01/01/87-03/31/90		Charles Herring
Amount: \$1,046,465		Jones, Day, Reavis & Pogue Dallas

Issue: Plaintiff's customers buy gifts from Plaintiff outside Texas and have the gifts delivered by common carrier to Texas "donees." Should the Comptroller have assessed use tax on these "gift sends" ? Second issue: whether tax is due on certain remodeling services. Plaintiff asks for attorneys fees under 42 USC §§1983 and 1988.

Status: Agreed judgment signed 03/11/96 on the gift send issue. An agreed order for severance was signed on 03/11/96 on the sales tax issues on remodeling services and attorneys' fees. Cause renumbered 93-10279-A. State filed a plea to jurisdiction on attorneys' fees on 10/06/93.

North American Intelcom, Inc., et al. v. Sharp, et al. Cause #97-05318

Sales Tax; Refund Filed: 05/02/97 Period: 04/01/91-05/31/95 Amount: \$2,029,180	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Jasper G. Taylor, III Fulbright & Jaworski Houston
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Issue: Whether care, custody, and control of Plaintiff's public telephone equipment passed to their customers, so that Plaintiff could buy the equipment tax free for resale.

Status: Answer filed.

North Texas Asset Management, Inc. v. Sharp, et al. Cause #94-08603

Sales Tax; Declaratory Judgment Filed: 7/14/94 Period: 05/02/91-12/31/91 Amount: \$24,307	Asst. AAG Assigned: Plaintiff's Counsel:	James Parsons Judy M. Cunningham Attorney at Law Austin
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Issue: Whether a sale of a business approved by the SBA (which held a lien and received the proceeds) is tantamount to a foreclosure sale so that no successor liability should attach.

Status: Answer filed; inactive.

Norwood Homes, Inc. v. Sharp, et al. Cause #98-05637

Sales Tax; Refund Filed: 05/28/98 Period: 10/01/92-06/30/96 Amount: \$77,887.44	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne John W. Mahoney Williams, Birnberg & Andersen Houston
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Issue: Whether certain cleaning services are taxable as real property services or are part of new construction of real property.

Status: Discovery in progress.

Ontario Investments, Inc. v. Sharp, et al. Cause #98-10956

Sales Tax; Protest Filed: 09/29/98 Period: 08/01/89-04/30/92 Amount: \$24,142	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Samuel E. Long Moseley & Standerfer Dallas
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Issue: Whether sales tax on equipment leases should have been accelerated when the leases were pledged as collateral.

Status: Discovery in progress.

Paragon Communications v. Sharp, et al. Cause #97-10995

Sales Tax; Protest Filed: 09/25/97 Period: 02/01/87-08/31/90 Amount: \$393,497	Asst. AAG Assigned: Plaintiff's Counsel:	Jim Cloudt Curtis J. Osterloh Scott, Douglass & McConnico Austin
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Issue: Whether municipal franchise fees paid by Plaintiff and passed on to its customers should be included in taxable cable services. Whether certain services, labor to lay new lines, purchased by Plaintiff were taxable repair and remodeling or were exempt new construction.

Status: Discovery in progress.

Perry Homes, A Joint Venture v. Sharp, et al. Cause #98-14226

Sales Tax; Protest Filed: 12/22/98 Period: 10/01/91-09/30/93 Amount: \$550,978.17	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Mark W. Eidman Ray Langenberg Paige Arnette Scott, Douglass & McConnico Austin
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Issue: Whether various service activities such as landscaping, cleaning and waste removal are taxable real property services. Whether any tax due is owed by independent contractor service providers under a tax- included contract. Whether tax was assessed on non-taxable new construction. Whether the assessment violates equal protection and whether interest should be waived.

Status: Answer filed.

Peter Piper, Inc. and L & H Pacific, L.L.C. v. Sharp, et al. Cause #96-11750

Sales Tax; Protest Filed: 09/27/96 Period: 08/01/89-06/30/92 Amount: \$155,404	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Richard L. Rothfelder Craig Estlinbaum Kirkendall, Isgur & Rothfelder Houston
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Issue: Whether prizes obtained by collecting tickets from amusement machines in a restaurant are “purchased” by the customer as part of the price of the food.

Status: Discovery in progress.

Petrolite Corp. v. Sharp, et al. Cause #91-13885

Sales Tax; Protest and Refund Filed: 09/27/91 Period: 04/01/84 - 03/31/88 Amount: \$432,105	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Resale certificates; taxable maintenance services; taxability of various chemicals and other tangible personal property used in oil well services.

Status: Inactive.

Phelan Co., The v. Sharp, et al. Cause #98-00504

Sales Tax; Protest and
Declaratory Judgment
Filed: 01/15/98
Period: 1988-1992
Amount: \$60,587

Asst. AAG Assigned:

Cecilia Gonzalez

Plaintiff's Counsel:

Rick Harrison
Harrison & Rial
Austin

Gilbert J. Bernal, Jr.
Stahl, Martens & Bernal
Austin

Issue: Whether the sample audit resulted in an incorrect assessment because it did not represent actual business conditions. Whether the audit was conducted in accordance with generally recognized sampling techniques.

Status: Discovery in progress. Trial set for 09/13/99.

Praxair, Inc. v. Sharp, et al. Cause #97-03919 (consolidated with Cause No. 95-00690)

Sales Tax; Refund &
Declaratory Judgment
Filed: 04/01/97
Period: 01/01/90-12/31/90
Amount: \$57,815

Asst. AAG Assigned:

Cecilia Gonzalez

Plaintiff's Counsel:

Gerard A. Desrochers
Jennifer Patterson
Baker & Botts
Houston

Issue: Whether the Comptroller erroneously denied Plaintiff's claim for refund of tax paid on manufacturing equipment, alleging that Plaintiff was not engaged in actual manufacturing.

Status: See Cause No. 95-00690

Praxair, Inc. v. Sharp, et al. Cause #95-00690

Sales Tax; Refund &
Declaratory Judgment
Filed: 01/18/95
Period: 1990
Amount: \$74,608

Asst. AAG Assigned:

Cecilia Gonzalez

Plaintiff's Counsel:

Gerard A. Desrochers
Jennifer Patterson
Baker & Botts
Houston

Issue: Whether the Comptroller erroneously denied Plaintiff's claim for refund of tax paid on manufacturing equipment, alleging that Plaintiff was not engaged in actual manufacturing.

Status: Discovery in progress. Stipulation of facts in progress.

Prodigy Services Co. v. Rylander, et al. Cause #99-02693

Sales Tax; Protest Filed: 03/05/99 Period: 01/01/93-06/30/96 Amount: \$206,971.88	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin Martin I. Eisenstein Brann & Isaacson Lewiston, Maine
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Issue: Whether use tax is owed on catalogs mailed from out of state. Whether imposition of use tax violates the commerce clause, equal protection and equal taxation. Whether taxpayer may recover attorneys' fees under the Uniform Declaratory Judgments Act.

Status: Answer filed.

R Communications, Inc. f/k/a RN Communications, Inc. v. Sharp, et al. Cause #91-4893

Sales Tax; Declaratory Judgment Filed: 04/08/91 Period: 10/01/80 - 11/02/84 Amount: \$None (Plaintiff was assessed \$67,836 tax but did not pay)	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Mark How Short, How, Frels & Tredoux Dallas
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Issue: Whether a taxpayer can be required to pay the disputed tax before filing suit in district court. Constitutionality of §112.108 under Texas Constitution Open Courts provision.

Status: District Court granted State's Plea to the Jurisdiction. State won appeal. Supreme Court reversed and remanded on 04/27/94. State's Motion for Rehearing denied. Inactive.

Rapid Design Service-El Paso, Inc. v. Sharp Cause #97-02341

Sales Tax; Protest Filed: 02/27/97 Period: 01/01/90-03/31/94 Amount: \$55,624	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne H. Christopher Mott Krafsur Gordon Mott El Paso
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Issue: Whether payments from Plaintiff to a limited partnership are taxable lease payments or are non-taxable transfers of amounts collected by Plaintiff as billing agent for a joint venture between Plaintiff and the limited partnership.

Status: Discovery in progress.

Reflectone Training Systems, Inc. v. Bullock, et al. Cause #492,137

Sales Tax; Protest Filed: 10/11/90 Period: 01/01/87 - 12/31/88 Amount: \$85,419	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Forrest Smith Arter & Hadden Dallas
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Issue: Taxability of lease payments reimbursed by U.S. Navy. Resale certificates and government exemption.

Status: Answer filed.

Residential Information Services Limited Partnership v. Sharp, et al. Cause #97-10302

Sales Tax; Refund Filed: 09/08/97 Period: 1996 Amount: \$914,667	Asst. AAG Assigned: Plaintiff's Counsel:	Jim Cloudt Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether a payment ("lease termination charge") made to the lessor to extinguish the lessee's obligations under an equipment lease is part of the taxable lease amount.

Status: State's Motion for Summary Judgment granted 03/31/98. Plaintiff has appealed. Parties' briefs filed in 07/98. Oral Argument held 12/09/98. Decision affirming judgment for Comptroller issued 04/08/99. Petition for review due 07/06/99.

Ryder Truck Rental, Inc. v. Sharp, et al. Cause #96-14241

Sales Tax; Protest Filed: 11/22/96 Period: 07/01/89-09/30/92 Amount: \$270,217	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez Paul O. Price Richard E. Flint The Kleberg Law Firm Corpus Christi
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Issue: Whether electricity purchases are exempt from sales tax because the electricity is used for processing.

Status: Discovery in progress. On hold pending appeal of *Haber Fabrics*.

Samedan Oil Corp. v. Sharp, et al. Cause #98-14105

Sales Tax; Protest Filed: 12/18/98 Period: 01/01/90-12/31/93 Amount: \$19,652.35	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez Mark W. Eidman Ray Langenberg Curtis Osterloh Scott, Douglass & McConnico Austin
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Issue: Whether information concerning oil and gas lease ownership and marketing are taxable information services. If so, whether the services were sold or used in Texas. Whether interest and penalty should be waived.

Status: Discovery in progress.

San Antonio SMSA\ Limited Partnership v. Sharp, et al. Cause #97-11831

Sales Tax; Refund Filed: 10/15/97	Asst. AAG Assigned:	Steve Rodriguez
Period: 01/01/89-08/31/92 Amount: \$217,898	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin

Issue: Whether engineering services were part of the sales price of tangible personal property sold to Plaintiff.

Status: See *Dallas SMSA*.

Schmitz Industries, Inc. v. Sharp Cause #95-15485

Sales Tax; Protest Filed: 12/15/95	Asst. AAG Assigned:	Steve Rodriguez
Period: 04/01/89-12/31/92 Amount: \$4,418	Plaintiff's Counsel:	Charles E. Klein Attorney at Law Dallas

Issue: Plaintiff alleges that the audit assessment is wrong because some of the transactions in the sample period are not representative of Plaintiff's business, and some transactions include tax exempt molds, dies and patterns with a useful life of six months or less.

Status: Answer filed.

Sears Roebuck & Co. v. Rylander, et al. Cause #99-04138

Sales Tax; Refund Filed: 04/08/99	Asst. AAG Assigned:	Jim Cloudt
Period: 10/01/88-12/31/91 Amount: \$1,792,421.59	Plaintiff's Counsel:	David E. Cowling Jones, Day, Reavis & Pogue Dallas

Issue: Whether use tax is owed on catalogs printed and shipped from out-of-state. Whether any taxable use was made or any consideration received by plaintiff. Whether “distribution” is a taxable use and whether the Comptroller’s rule identifying it as such is valid. Whether imposition of the tax violates the due process, commerce, or equal protection clauses. Alternatively, whether calculation of the tax as on the correct cost basis, whether tax should not be collected because the catalogs are “books,” and whether penalty should be waived.

Status: Answer filed.

Service Merchandise Co., Inc. v. Sharp, et al. Cause #98-11572

Sales Tax; Protest Filed: 10/13/98	Asst. AAG Assigned:	Christopher Jackson
Period: 01/01/92-12/31/93 Amount: \$413,569	Plaintiff's Counsel:	David E. Cowling Jones, Day, Reavis & Pogue Dallas

Issue: Whether the purchase of sales catalogs printed out of state and shipped to Plaintiff's customers in Texas (at no charge to the customer) incur sales tax.

Status: On hold. Plaintiff filed bankruptcy in Tennessee on 03/25/99.

Southwest Pay Telephone Corp., Successor in Interest to Southwest Pay Telephone Systems, Inc. v. Sharp, et al. Cause #97-00684

Sales Tax; Refund Filed: 01/17/97	Asst. AAG Assigned:	Blake Hawthorne
Period: 03/01/91-12/31/94 Amount: \$117,600	Plaintiff's Counsel:	Mary S. Dietz Fulbright & Jaworski Houston

Issue: Whether Plaintiff transferred “care, custody, and control” of telephone equipment to the customers of its public telephone service such that it could buy the equipment tax-free per Rule 3.344 (e).

Status: Discovery in progress.

Southwest Subrogation Services, Inc. v. Sharp, et al. Cause #98-09148

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Blake Hawthorne
Filed: 08/17/98	Plaintiff's Counsel:	Gregory E. Perry
Period: 10/01/87-09/30/92		Attorney at Law
Amount: \$483,778		Austin

Issue: Whether Plaintiff's services are taxable as debt collection or related services. Whether fraud penalty should have been assessed. Whether Plaintiff is required to prepay the tax before receiving judicial review of the tax assessment. Whether certain tax statutes are constitutional. Whether interest should be waived.

Status: Plaintiff filed for bankruptcy on 10/01/98. Federal stay is in effect.

Spaw-Glass, Inc. and Spaw Glass Construction Co. v. Rylander, et al. Cause #99-06716

Sales Tax; Protest & Refund	Asst. AAG Assigned:	Walter Dean
Filed: 06/11/99	Plaintiff's Counsel:	Jasper G. Taylor, III
Period: 04/01/93-03/31/96		C. Rhett Shaver
10/01/93-06/30/96		Fulbright & Jaworski
Amount: \$134,067.87		Houston
\$34,469.19		

Issue: Whether Plaintiff is not subject to sales tax because it was a lump sum contractor on the transactions at issue. Whether penalty and interest should be waived.

Status: Answer filed.

Sprint International Communications, Inc. v. Sharp, et al. Cause #96-14298

Sales Tax; Refund	Asst. AAG Assigned:	Steve Rodriguez
Filed: 11/22/96	Plaintiff's Counsel:	Wallace M. Smith
Period: 02/01/86-01/31/90		Donald L. Stuart
Amount: \$1,269,474		R. Kemp Kasling
		Drenner & Stuart
		Austin

Issue: Whether networking services are taxable as telecommunications services.

Status: Answer filed.

Steamatic of Austin, Inc., et al. v. Sharp, et al. Cause #97-02651

Sales Tax; Protest Filed: 03/05/97	Asst. AAG Assigned:	Steve Rodriguez
Period: 04/01/91-04/30/94 Amount: \$166,148	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin

Issue: Plaintiff contends that an amendment to §151.350 of the Tax Code did not narrow the existing exemption, but if it did, it was not effective until the Comptroller amended the corresponding Rule, 3.357. Issue is tax on labor to restore property damaged in a disaster area.

Status: Summary Judgment to be filed.

Sung Ju Choi d/b/a Sam Young Trading Co. v. Sharp Cause #95-14940

Sales Tax; Injunction Filed: 11/30/95	Asst. AAG Assigned:	Steve Rodriguez
Period: 01/01/88-12/31/91 Amount: \$54,068	Plaintiff's Counsel:	Kenneth Thomas Attorney at Law Dallas

Issue: Whether certain resale certificates should have been accepted by the Comptroller during the audit. Whether an injunction to suspend all collection activity should be granted.

Status: Discovery in progress.

Tennessee Gas Pipeline Co. v. Sharp, et al. Cause #98-09521

Sales Tax; Refund Filed: 08/25/98 Period: 01/01/94-04/03/96 Amount: \$85,430	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez Ron Patterson Kliwer, Breen, Garaton, Patterson & Malone, Inc. Austin Michael R. Garatoni Guaranty Center San Antonio
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Issue: Plaintiff contends that because it operates a common-carrier pipeline and is a certificated or licensed carrier of property it may avoid sales tax on repair, remodeling, and maintenance services purchased in connection with the maintenance and repair of aircraft Plaintiff owns and uses in operating its common-carrier pipeline.

Status: Discovery in progress.

Texas Gulf, Inc. v. Bullock, et al. Cause #485,228

Sales Tax; Refund Filed: 06/05/90 Period: 01/01/85 - 06/30/88 Amount: \$294,000	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez Ira A. Lipstet Jenkins & Gilchrist Austin
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Issue: Are pipes exempt as manufacturing equipment or taxable as intra plant transportation?

Status: State's Plea to the Jurisdiction denied. Settlement negotiations in progress.

Thermodyn Contractors, Inc. v. Sharp, et al. Cause #97-02947

Sales Tax; Protest Filed: 03/11/97 Period: 01/01/92-12/31/94 Amount: \$191,757	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson H. Christopher Mott Krafsur Gordon Mott El Paso
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Issue: Whether Plaintiff, a subcontractor to the Small Business Administration, has a separated or lump sum contract with that agency.

Status: Trial set 08/16/99.

Transcontinental Gas Pipeline Corp. v. Rylander, et al. Cause #99-06997

Sales Tax; Protest Filed: 06/17/99 Period: 03/93-05/95 Amount: \$112,684.43	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez Ron Patterson Kliwer, Breen, Garatoni, Patterson & Malone Austin Michael R. Garatoni Kliwer, Breen, Garatoni, Patterson & Malone San Antonio
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Issue: Whether Plaintiff, a common carrier gas pipeline operator, may claim a sales and use tax exemption on its purchase of an airplane. Whether airplane repair and replacement parts are exempt.

Status: Answer filed.

Turnkey Construction, Inc. v. Sharp, et al. Cause #98-12767

Sales Tax; Protest Filed: 11/13/98 Period: 10/01/91-10/31/95 Amount: \$172,292	Asst. AAG Assigned: Plaintiff's Counsel:	Jim Cloudt Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether the addition of Vapor Recovery System to serve station fuel storage tanks is new construction or real property repair and remodeling.

Status: Discovery in progress. Trial set 07/19/99.

Union Carbide Chemicals & Plastics Co., Inc. v. Sharp, et al. Cause #93-05809

Sales Tax; Protest Filed: 05/18/93	Asst. AAG Assigned:	Blake Hawthorne
Period: 01/01/85 - 12/31/88	Plaintiff's Counsel:	L. G. "Skip" Smith Clark, Thomas & Winters Austin
Amount: \$419,382		

Issue: Whether a contract is exempt as a prior contract.

Status: Discovery in progress.

United Services Automobile Association v. Sharp, et al. Cause #97-02927

Sales Tax; Refund Filed: 03/10/97	Asst. AAG Assigned:	Steve Rodriguez
Period: 02/01/91-07/31/94	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
Amount: \$656,667		

Issue: Whether certain professional and leak detection services are taxable. Whether tax is due on material printed out-of-state and mailed directly to Texas customers.

Status: Discovery in progress.

Wal-Mart Stores, Inc. v. Sharp, et al. Cause #94-12948

Sales Tax; Refund Filed: 10/14/94	Asst. AAG Assigned:	Jim Cloudt
Period: 08/87-07/90; 01/88-12/91; 01/88-12/92	Plaintiff's Counsel:	Tom Tourtellotte Tourtellotte & Kennon Austin
Amount: \$18,268		

Issue: Plaintiff attacks the Comptroller's change in policy with regard to prior contracts. The issue is whether two-party contracts are eligible for the exemption, as opposed to three-party contracts, only.

Status: Discovery in progress.

Waller Hotel Group, Inc. v. Sharp, et al. Cause #98-03990

Sales Tax; Refund Filed: 04/16/98 Period: 03/01/91-08/31/94 Amount: \$51,614	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin Mark Cohen Attorney at Law Austin
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Issue: Whether purchases of gas and electricity at Plaintiff's hotel were exempt as residential use, based on a utility study conducted by Plaintiff's expert.

Status: Discovery in progress.

West Texas Pizza, Limited Partnership v. Sharp, et al. Cause #96-11751

Sales Tax; Protest Filed: 09/27/96 Period: 06/01/88-06/30/92 Amount: \$35,247	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Richard L. Rothfelder Milissa M. Magee Kirkendall, Isgur & Rothfelder Houston
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Issue: Whether prizes obtained by collecting tickets from amusement machines in a restaurant are "purchased" by the customer as part of the price of the food.

Status: Discovery in progress.

Westar Hotels, Inc. v. Sharp, et al. Cause #97-06182

Sales Tax; Refund Filed: 05/23/97 Period: 11/01/90-07/31/94 Amount: \$73,827	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin
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Issue: Whether Plaintiff owes tax on electricity used in its hotels.

Status: Answer filed.

Young's Beer Barn, Inc. v. Sharp Cause #94-14347

Sales Tax; Injunction	Asst. AAG Assigned:	Steve Rodriguez
Filed: 11/17/94		
Period: 06/01/89-07/31/92	Plaintiff's Counsel:	Kenneth Thomas
Amount: \$144,608		Dallas

Issue: Plaintiff states, "The Comptroller erred in its audit of the plaintiff by including bank transactions in the taxable sales of the plaintiff for the period... ." Plaintiff also asks for an injunction against collection action.

Status: Discovery answered by Plaintiff.

Insurance Tax

All American Life Insurance Co., et al. v. Sharp, et al. Cause #98-00195

Insurance Premium & Insurance Maintenance Tax; Protest Filed: 01/07/98 Period: 1991-1994 Amount: \$276,151 (Premium) \$4,804 (Maintenance)	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Jay A. Thompson Clark, Thomas & Winters Austin Dudley D. McCalla Heath, Davis & McCalla Austin Melissa Eason Akin, Gump, Strauss, Hauer & Feld Austin
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Issue: Whether certain transactions called "internal rollover" by Plaintiffs, consisting of substituting one insurance policy for a prior policy and transferring funds, result in gross premiums subject to tax.

Status: Answer filed.

All American Life Insurance Co. v. Sharp, et al. Cause #98-07917

Gross Premium Tax; Protest Filed: 07/24/98 Period: 1994-1996 Amount: \$29,169	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Dudley D. McCalla Heath, Davis & McCalla Austin
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Issue: Whether certain transactions called "internal rollover" by Plaintiffs, consisting of substituting one insurance policy for a prior policy and transferring funds, result in gross premiums subject to tax.

Status: Answer filed.

American & Foreign Insurance Co., Royal Indemnity Co., Royal Insurance Co. of America and Safeguard Insurance Co. v. TDI; Jose Montemayor, Cmsr.; Cornyn; Rylander; CPA; and Texas Public Finance Authority Cause #99-06208

Maintenance Tax; Refund
& Declaratory Judgment

Filed: 05/27/99

Period: 1998

1998

1998

1998

Amount: \$2,036.27

\$17,389.16

\$43,339.45

\$32.41

Asst. AAG Assigned:

Gene Storie

Plaintiff's Counsel:

Stephen L. Phillips

Julie K. Lane

Roan & Autrey

Austin

Issue: Whether the workers' compensation maintenance tax surcharge should be calculated on premiums actually written or premiums including deductible amounts.

Status: Answer filed.

American Bankers Insurance Co. of Florida, et al. v. Ann Richards, et al. Cause #396,975

Gross Premium Tax;
Protest

Filed: 05/08/86

Period: 1985-1988

Amount: \$1,745,569

Asst. AAG Assigned:

Steve Rodriguez

Plaintiff's Counsel:

Fred B. Werkenthin

Jackson & Walker

Austin

Issue: Whether Tex. Ins. Code art. 4.10 unconstitutionally discriminates against foreign property and casualty companies by basing the premium tax rate on their percentage of Texas investments (equal protection). (Pleadings refer to art. 4.10, but protest letters refer to arts. 4.11 and 21.46.) Also seeks recovery and attorneys' fees pursuant to 42 U.S.C. §1983.

Status: Inactive.

American General Life Insurance Co., American National Life Insurance Co., and American National Insurance Co. v. Sharp, et al. Cause #98-13996

Maintenance & Gross Premium Tax; Refund	Asst. AAG Assigned:	Gene Storie
Filed: 12/16/98	Plaintiff's Counsel:	Dudley D. McCalla
Period: 01/01/91-12/31/94		Heath, Davis & McCalla
Amount: \$204,695.81		Austin

Issue: Whether "internal rollovers" of existing life insurance policies result in gross premiums subject to tax.

Status: Answer filed.

American Home Assurance Co., et al. v. Texas Department of Insurance, et al. Cause #95-06353

Maintenance Tax; Protest, Declaratory Judgment & Injunction	Asst. AAG Assigned:	Gene Storie
Filed: 05/19/95	Plaintiff's Counsel:	Anthony Icenogle
Period: 1995-1997		Joseph C. Boggins
Amount: \$8,693,301		DeLeon & Boggins
		Austin

Issue: Whether the maintenance tax should be calculated on the actual premiums collected or the amount of premiums that would have been collected had they not been lowered by applying higher deductibles.

Status: Cross Motions for Summary Judgment heard on 02/17/98. Judgment for Plaintiff signed 06/12/98. State filed motion for new trial. New trial granted on issue of attorneys' fees, only, and amended judgment for Plaintiff signed 09/10/98. State's notice of appeal filed 10/12/98 under the caption of *Commerce & Industry Insurance Co., et al. v. Texas Department of Insurance, et al.* Principal briefs filed. State's Reply brief due 04/19/99. Argued 05/05/99. Decision pending.

Commerce & Industry Co., AIU Insurance Co., New Hampshire Insurance Co., Granite State Insurance Co. and Illinois National Insurance Co. v. Texas Department of Insurance, et al. Cause #97-02617

Maintenance Tax; Protest
& Declaratory Judgment
Filed: 05/23/97
Period: 1996
Amount: \$158,199

Asst. AAG Assigned:

Gene Storie

Plaintiff's Counsel:

Joseph C. Boggins
Anthony Icenogle
DeLeon, Boggins &
Icenogle
Austin

Issue: Whether the maintenance tax paid by companies selling workers compensation insurance is disproportionately higher for some insurers because "gross insurance premiums," used to calculate the tax, does not take into account discounts on policies containing deductibles. The tax is based on the premium cost before the discount, and Plaintiff alleges that it receives less in actual premium dollars than an insurer selling policies with discounts for deductibles.

Status: Consolidated with *American Home Assurance*. All original *Commerce & Industry* Plaintiffs non-suited prior to judgment.

Dow Chemical Co. v. Rylander, et al. Cause #99-05725

Independently Procured
Insurance Tax; Protest
Filed: 05/17/99
Period: 1991-1997
Amount: \$427,148.80

Asst. AAG Assigned:

Gene Storie

Plaintiff's Counsel:

Mark W. Eidman
Ray Langenberg
Scott, Douglass &
McConnico
Austin

Issue: Whether statute levying tax on independently procured insurance is unconstitutional under the *Todd Shipyards* case.

Status: Answer filed.

Federal Home Life Insurance Co. v. Rylander, et al. Cause #99-06142

Retaliatory Tax; Protest Filed: 05/26/99 Period: 1998 Amount: \$9,328.01	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Ron K. Eudy Sneed, Vine & Perry Austin
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Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

First Colony Life Insurance Co. v. Rylander, et al. Cause #99-06143

Retaliatory Tax; Protest Filed: 05/26/99 Period: 1998 Amount: \$192,371.48	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Ron K. Eudy Sneed, Vine & Perry Austin
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Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

GE Life and Annuity Assurance Co., fka Life Insurance Co. of Virginia v. Rylander, et al. Cause #99-06145

Retaliatory Tax; Protest Filed: 05/26/99 Period: 1998 Amount: \$59,574.64	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Ron K. Eudy Sneed, Vine & Perry Austin
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Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

General Electric Capital Assurance Co. v. Rylander, et al. Cause #99-06144

Retaliatory Tax; Protest Filed: 05/26/99 Period: 1998 Amount: \$46,658.03	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Ron K. Eudy Sneed, Vine & Perry Austin
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Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

Great Northern Insured Annuity Corp. v. Rylander, et al. Cause #99-06146

Retaliatory Tax; Protest Filed: 05/26/99 Period: 1998 Amount: \$8,459.31	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Ron K. Eudy Sneed, Vine & Perry Austin
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Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

Harvest Life Insurance Co., The v. Rylander, et al. Cause #99-06147

Retaliatory Tax; Protest Filed: 05/26/99 Period: 1998 Amount: \$26,640.79	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Ron K. Eudy Sneed, Vine & Perry Austin
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Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

Heritage Life Insurance Co. v. Rylander, et al. Cause #99-06148

Retaliatory Tax; Protest Filed: 05/26/99 Period: 1998 Amount: \$10,987.86	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Ron K. Eudy Sneed, Vine & Perry Austin
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Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

Liberty National Life Insurance Co. v. Martha Whitehead, et al. Cause #93-08432

Retaliatory Tax; Protest Filed: 07/15/93 Period: 1990-1992 Amount: \$54,511	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Ron Eudy Sneed, Vine & Perry Austin
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Issue: Whether art. 21.46 retaliatory tax has been properly applied to Plaintiff's tax rates in Texas and Alabama, and whether the tax violates equal taxation and equal protection. (Also Plaintiff seeks recovery under the Declaratory Judgments Act and 42 U.S.C. §1983 including attorneys' fees.)

Status: Conference with opposing counsel held.

Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al. Cause #484,745

Gross Premium Tax; Protest Filed: 05-24-90 Period: 1985-1986 1989-1992 Amount: \$1,848,606	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Mary K. Wolf Austin
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Issue: Whether insurance taxes are owed by insurance companies on dividends applied to paid-up additions and renewal premiums.

Status: 9th Amended Petition filed. Settlement discussed, and partial settlement agreed to.

Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al. Cause #484,796

Maintenance Tax; Protest Filed: 05-23-90 Period: 1989-1991 Amount: \$1,616,497	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Mary K. Wolf Jackson & Walker Austin
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Issue: Whether Tex. Ins. Code art. 21.07-6 is preempted by ERISA.

Status: One Plaintiff has submitted documentation supporting a refund. Case will be concluded in accordance with *NGS v. Barnes*, 998 F.2d 296 (5th Cir. 1993). Severance and final judgment entered for Metropolitan. Awaiting documentation for other Plaintiffs.

Principal Life Insurance Co. v. Rylander, et al. Cause #99-06141

Retaliatory Tax; Refund Filed: 05/26/99 Period: 1998 Amount: \$256,577.79	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Ron K. Eudy Sneed, Vine & Perry Austin
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Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

Redland Insurance Co. v. State of Texas, et al. Cause #91-15487

Gross Premium Tax; Protest Filed: 11-05-91 Period: 1991 Amount: \$157,098	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie W. Hollis Webb, Jr. Harding, Bass, Fargason & Booth Lubbock
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Issue: Whether premium tax is preempted for crop insurance guaranteed by federal Department of Agriculture.

Status: Inactive. (Same issue was decided against Kansas in recent 10th Circuit case.)
Requesting non-suit from Plaintiff.

Southwestern Life Insurance Co. v. Philip Barnes, et al. Cause #91-4800

Gross Premium Tax; Protest	Asst. AAG Assigned:	Gene Storie
Filed: 04-05-91	Plaintiff's Counsel:	L. G. "Skip" Smith
Period: 1990		David H. Gilliland
Amount: \$231,114		Clark, Thomas & Winters Austin

Issue: Whether an insurance taxpayer may take a credit for examination and valuation fees paid to Texas in one year against a later year's insurance taxes.

Status: Inactive.

Southwestern Life Insurance Co. v. Georgia Flint, et al. Cause #92-07547

Gross Premium Tax; Protest	Asst. AAG Assigned:	Gene Storie
Filed: 05-28-92	Plaintiff's Counsel:	L. G. "Skip" Smith
Period: 1990		David H. Gilliland
Amount: \$183,719		Clark, Thomas & Winters Austin

Issue: Whether an insurance taxpayer may take a credit for examination and valuation fees paid to Texas in one year against a later year's insurance taxes.

Status: Discovery in progress. Motion for summary judgment set 09/22/99.

Southwestern Life Insurance Co. v. Sharp, et al. Cause #98-11945

Gross Premium Maintenance Tax; Protest	Asst. AAG Assigned:	Gene Storie
Filed: 10/22/98	Plaintiff's Counsel:	L. G. "Skip" Smith
Period: 01/01/92-12/31/95		Clark, Thomas & Winters
Amount: \$392,737		Austin

Issue: Whether certain transactions called "internal rollover" by Plaintiffs, consisting of substituting one insurance policy for a prior policy and transferring funds, result in gross premiums subject to tax.

Status: Answer filed.

Texas Workers' Compensation Insurance Facility v. Comptroller Cause #96-07940

Maintenance Tax; Declaratory Judgment Filed: 07/09/96 Period: 1992-1995 Amount: \$Not Stated	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Frank Stenger-Castro Fred Lewis Texas Workers' Compensation Insurance Facility Austin
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Issue: Plaintiff seeks a ruling that Rule 3.804(d) concerning a maintenance tax surcharge is invalid.

Status: Inactive. Court set on dismissal docket.

Texas Workers' Compensation Insurance Facility v. Comptroller, et al. Cause #97-03602

Maintenance Tax; Refund Filed: 03/25/97 Period: 1992-1995 Amount: \$23,623,585	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Larry Parks Long, Burner, Parks & Sealey Austin
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Issue: Whether the Facility may recover from the State the maintenance tax surcharge which it reimbursed to insurers.

Status: Motion for summary judgment set 08/17/99.

Union Fidelity Life Insurance Co. v. Rylander, et al. Cause #99-06149

Retaliatory Tax; Protest Filed: 05/26/99 Period: 1998 Amount: \$147,554.42	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Ron K. Eudy Sneed, Vine & Perry Austin
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Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

United American Insurance Co. v. Rylander, et al. Cause #99-06836

Gross Premium Tax; Protest Filed: 06/15/99 Period: 1990-1996 Amount: \$1,262,878.98 \$7,487.00	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Sam R. Perry Sneed, Vine & Perry Austin
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Issue: Whether Plaintiff's investment in a limited partnership which held Texas mineral interests qualifies as a Texas investment for purposes of reducing Plaintiff's gross premiums tax rate. Whether investments in limited partnerships should be treated the same as investments in corporations. Whether Plaintiff was denied equal protection under the federal or state constitutions. Plaintiff also asks for attorneys' fees.

Status: Answer filed.

Universe Life Insurance Co. v. State of Texas Cause #97-05106

Insurance Tax; Protest Filed: 04/29/97 Period: 1993 Amount: \$56,958	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Larry Parks Long, Burner, Parks & Sealey Austin
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Issue: Whether plaintiff should be given credit against tax due for examination fees paid to the state in connection with a market conduct examination report ordered by the Texas Department of Insurance. Plaintiff also asks for penalty and interest waiver.

Status: Cross-motions for Summary Judgment heard 11/12/97. Summary Judgment granted for Plaintiff. State has appealed. Case submitted without oral argument 07/06/98. Affirmed in part, reversed and remanded in part 03/11/99. State's Motion for Rehearing denied. Petition for Review filed 06/01/99.

Controlled Substances Tax

Diaz, Benito Vasquez v. Sharp Cause #95-07842

Controlled Substances Tax; Appeal	Asst. AAG Assigned:	Blake Hawthorne
Filed: 06/23/95	Plaintiff's Counsel:	Benito Vasquez Diaz, Pro Se
Period: 06/22/93		Huntsville
Amount: \$35,114		

Issue: Whether the Drug Tax is constitutional.

Status: Settlement discussions in progress.

Johnson, William E. v. Sharp, et al. Cause #98-11397

Controlled Substances Tax; Refund	Asst. AAG Assigned:	Blake Hawthorne
Filed: 10/09/98	Plaintiff's Counsel:	C. Wayne Huff
Period: 7/14/98		Attorney at Law
Amount: \$65,832		Dallas

Issue: Whether tax paid under protest to release a lien on property assigned to Plaintiff in lieu of attorneys' fees should be refunded.

Status: Answer filed. Plaintiff's proposed Motion for Summary Judgment submitted.

Martinez, Jesus Manuel v. Sharp, et al. Cause #95-06432

Controlled Substances Tax; Declaratory Judgment	Asst. AAG Assigned:	Blake Hawthorne
Filed: 05/22/95	Plaintiff's Counsel:	Carlos Eduardo Cardenas
Period: 09/03/93		Law Offices of Joseph Abraham, Jr.
Amount: \$723,957		El Paso

Issue: Whether the Controlled Substances Tax Act is unconstitutional on various grounds.

Status: Plaintiff's Motion for Summary Judgment pending.

Popp, Robert K. v. Sharp Cause #95-13808

Controlled Substances	Asst. AAG Assigned:	Blake Hawthorne
Tax; Not stated		
Filed: 11/03/95	Plaintiff's Counsel:	Paul J. Goeke
Period: 1992		Attorney at Law
Amount: \$12,793		San Antonio

Issue: Plaintiff urges that “the evidence was insufficient as a matter of law to support the judgment.” Plaintiff also asserts that the assessment of the drug tax violates the double jeopardy provisions of the Fifth Amendment.

Status: Answer filed.

Rubrecht, Henry Fred v. Bullock, et al. Cause #486,655

Controlled Substances	Asst. AAG Assigned:	Blake Hawthorne
Tax; Protest		
Filed: 06/29/90	Plaintiff's Counsel:	Edwin M. Sigel
Period: N/A		Dallas
Amount: \$17,169		

Issue: Is the Controlled Substances Tax Act unconstitutional?

Status: Inactive.

Salih, John Douglas v. Sharp, et al. Cause #96-04153

Controlled Substances	Asst. AAG Assigned:	Blake Hawthorne
Tax; Declaratory		
Judgment	Plaintiff's Counsel:	Charles O. Grigson
Injunction		Attorney at Law
Filed: 04/11/96		Austin
Period: 09/95		
Amount: \$304,110		

Issue: Whether the Controlled Substances Tax Act is unconstitutional on various grounds.

Status: Answer filed.

Smith, Kelli Deann v. Sharp Cause #95-15061

Controlled Substances Tax; Declaratory Judgment Filed: 12/04/95 Period: 01/27/93 Amount: \$17,222	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Craig A. Stokes Oppenheimer, Blend, Harrison & Tate San Antonio
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Issue: Plaintiff asserts that Chapter 159 of the Texas Tax Code is unconstitutional because it does not require proof of a tax liability beyond a reasonable doubt.

Status: Answer filed.

Sternberg, Bruce Lee v. Sharp, et al. Cause #92-14924

Controlled Substances Tax; Protest & Declaratory Judgment Filed: 10-23-92 Period: 05/24/90 Amount: \$5,253	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Charles O. Grigson Austin
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Issue: Constitutionality of Controlled Substances Tax Act.

Status: Some discovery completed. Inactive.

Other Taxes

AT&T Corp. and AT&T Communications of the Southwest, Inc. v. Sharp, et al. Cause #97-02005

Misc. Gross Receipts & PUC Gross Receipts Tax; Refund Filed: 02/19/97 Period: 10/01/79-06/30/88 Amount: \$34,401,333 (gross receipts) \$7,990,267 (PUC assessments)	Asst. AAG Assigned: Plaintiff's Counsel:	Jim Cloudt Jasper G. Taylor, III Fulbright & Jaworski Houston
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Issue: Whether taxpayers similarly situated to AT&T were not required to pay gross receipts tax and PUC assessments, as AT&T was, resulting in discrimination against Plaintiff under the equal and uniform taxation clause of the Texas Constitution and the equal protection clause of the U.S. Constitution.

Status: Hearing on State's objections to discovery held 06/25/97. Objections upheld. Trial held 01/05/98. Court ruled for State 01/09/98. Plaintiff filed notice of appeal. Plaintiff's brief was due 10/26/98. Appellee's brief filed 11/24/98; Appellant's Reply was due 01/14/99. Oral argument held 03/4/99.

Castleberry ISD; Ennis ISD; Canyon ISD; La Porte ISD v. Texas Comptroller Cause #96-08010

Property Tax; Declaratory Judgment Filed: 07/11/96 Period: 1994 Amount: \$Not stated	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Robert Mott Joseph Longoria Perdue, Brandon, Fielder, Collins & Mott Houston
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Issue: Various issues concerning the validity of the Comptroller's property value study.

Status: Answer and Special Exception filed. Inactive. Settlement reached with Canyon ISD. Only La Porte ISD is now pending.

Celadon Trucking Services, Inc. v. Sharp, et al. Cause #97-00827

Interstate Motor Carrier	Asst. AAG Assigned:	Jim Cloudt
Sales Tax; Protest		
Filed: 01/22/97	Plaintiff's Counsel:	Mark W. Eidman
Period: 02/88-02/92		Ray Langenberg
Amount: \$1,151,784		Scott, Douglass & McConnico Austin

Issue: Whether the residual value of leased vehicles should be deducted from the lease price that is taxed, when the vehicles are sold back to the lessors at the end of the lease. Whether the tax is fairly apportioned given the amount of business Plaintiff conducts in Mexico.

Status: Discovery in progress.

Chevron USA, Inc. v. Sharp, et al. Cause #97-05867

Motor Fuels Tax; Refund	Asst. AAG Assigned:	Christine Monzingo
Filed: 05/15/97		
Period: 04/01/90-03/31/94	Plaintiff's Counsel:	Mark W. Eidman
Amount: \$316,460		Ray Langenberg
		Scott, Douglass & McConnico Austin

Issue: Plaintiff is a petroleum refiner and a diesel fuel bonded supplier. The Comptroller denied refund claims because they were barred by the one-year statute of limitations in §153.224. Plaintiff contends that the statute of limitations in §111.104 (c) is applicable; that an agreement to extend the statute of limitations applied to Plaintiff's refund request; that the one-year statute does not apply because the refund claim is not made pursuant to Chapter 153 (Motor Fuels Tax); that the Comptroller's guidelines apply the four-year statute in circumstances similar to Plaintiff's; and that, in the alternative, the one-year statute is unconstitutional. There is also a detrimental reliance claim.

Status: Discovery in progress.

Chevron USA, Inc. v. Sharp, et al. Cause #96-06931

Natural Gas Production Tax; Refund Filed: 06/13/96 Period: 08/18/90 Amount: \$157,463	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Mark, W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether tax should have been assessed on Order 94 payments.

Status: Discussions in progress.

City of Cedar Park v. Capital Metropolitan Transportation Authority and Rylander Cause #99-180-C26

MTA Tax; Local MTA Filed: 05/21/99 Period: 1999 Amount: \$	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie John L. Foster Minton, Burton, Foster & Collins Austin Leonard B. Smith City Attorney Cedar Park
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Issue: What amounts of local tax are due to Cedar Park and Capital Metro?

Status: Capital Metro's motion to transfer venue set 07/06/99. Comptroller's answer deferred by agreement pending further discussion with Plaintiff.

Davis, Mary v. Sharp, et al. Cause #97-09703

Motor Vehicle Tax; Refund Filed: 08/22/97 Period: 1994 Amount: \$1,300	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Whether Plaintiff is entitled to an exemption from motor vehicle tax under §152.086, which includes an exemption for motor vehicles modified by or for the transportation of an orthopedically handicapped person.

Status: Discovery in progress.

El Paso Natural Gas Co. v. Sharp Cause #91-6309

Gas Production Tax; Declaratory Judgment Filed: 05/06/91 Period: 01/01/87 - 12/31/87 Amount: \$10,337,786	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Alfred H. Ebert, Jr. Andrews & Kurth Houston
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Issue: Whether Comptroller should have granted Plaintiff a hearing on penalty waiver and related issues.

Status: State's Plea in Abatement granted pending outcome of administrative hearing on audit liability. Negotiations pending.

Fina Oil and Chemical Co. v. Sharp, et al. Cause #96-06321

Severance Tax; Refund Filed: 05/31/96 Period: 01/01/88-08/31/92 Amount: \$141,330	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez L. G. "Skip" Smith David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Whether certain expenses incurred between the well and point of sale may be deducted as marketing costs.

Status: Settlement conference held. Negotiations pending.

Gant, Jesse A., Estate of v. Comptroller, et al. Cause #96-07733

Inheritance Tax;	Asst. AAG Assigned:	Steve Rodriguez
Declaratory Judgment		
Filed: 07/03/96	Plaintiff's Counsel:	Peter K. Munson
Period: 07/24/92		Munson, Munson, Pierce
Amount: \$Not stated		& Cardwell
		Sherman

Issue: Whether penalty should be waived.

Status: Answer filed.

Kerrville ISD v. Comptroller Cause #98-08168

Property Tax; Substantial	Asst. AAG Assigned:	Gene Storie
Evidence Review		
Filed: 07/28/98	Plaintiff's Counsel:	Roy L. Armstrong
Period: 1997		Shelburne J. Veselka
Amount: \$Not stated		McCreary, Veselka,
		Bragg & Allen
		Austin

Issue: Whether the Comptroller's property value study was incorrect in that the Comptroller failed to use samples of properties selected through generally accepted sampling techniques and failed to perform the value study according to generally accepted standard valuation, statistical compilation and analysis techniques.

Status: Plaintiff has made settlement offer.

Kyle, Scott E. v. Sharp, et al. Cause #97-00066

Inheritance Tax;	Asst. AAG Assigned:	Gene Storie
Declaratory Judgment		
Filed: 01/03/97	Plaintiff's Counsel:	Pro Se
Period: DOD 07/22/83		
Amount: \$99,018		

Issue: Whether the Comptroller's assessment of inheritance tax is barred by the statute of limitations. Whether the value placed on the estate by the Comptroller is correct.

Status: Settlement discussions in progress.

Lake Worth ISD, et al. v. Texas Comptroller of Public Accounts Cause #97-08882

Property Tax; Substantial Evidence Review	Asst. AAG Assigned:	Christine Monzingo
Filed: 08/05/97	Plaintiff's Counsel:	Russell R. Graham
Period: 1996		Calame, Linebarger, Graham & Pena
Amount: \$Not stated		Austin

Issue: Whether the Comptroller's property value study is incorrect in that it misstates the market value of the subject property and causes the estimate of market value for Category F to exceed the actual market value of the School District's 1996 tax base, depriving it of state aid to which it is legally entitled.

Status: Discovery in progress.

McCarty-Hull Cigar Co. v. Sharp, et al. Cause #98-14217

Protest Tax; Refund	Asst. AAG Assigned:	Walter Dean
Filed: 12/22/98		
Period: 09/01/93-06/30/96	Plaintiff's Counsel:	Tom Tourtellotte
Amount: \$33,582.58		Tourtellotte & Kennon Austin

Issue: Whether tax base for cigar and tobacco tax was properly calculated for inventory bought for reduced prices or on a "two-for-one" basis.

Status: Answer filed.

McCarty-Hull Cigar Co. v. Rylander, et al. Cause #99-01996

Protest Tax; Refund	Asst. AAG Assigned:	Walter Dean
Filed: 02/19/99		
Period: 09/01/93-06/30/96	Plaintiff's Counsel:	Tom Tourtellotte
Amount: \$40,404.49		Tourtellotte & Kennon Austin

Issue: Whether promotional allowances or two-for-one sales were "ongoing" or "uniform price" transactions rather than trade discount, special discount or deal for purposes of determining the manufacturer's list price.

Status: Answer filed.

McLane Company, Inc. v. Rylander, et al. Cause #99-00979

Protest Tax; Refund Filed: 01/27/99	Asst. AAG Assigned:	Jim Cloudt
Period: 01/01/90-01/31/96 Amount: \$26,500,000	Plaintiff's Counsel:	Gilbert J. Bernal, Jr. James F. Martens Stahl, Martens & Bernal Austin

Issue: Whether taxes on tobacco products are based on the list price of products sold by a manufacturer only to its affiliated distributor or on the price paid by a Texas distributor to the affiliated distributor. Whether tax based on the distributor's price violates the commerce clause or equal protection. Whether departmental construction was followed and whether refunds must be made to consumers before distributor may receive refund.

Status: Answer filed. Settlement discussions in progress.

Preston Motors by George L. Preston, Owner v. Sharp, et al. Cause #91-11987

Motor Vehicle Tax; Protest Filed: 08/26/91	Asst. AAG Assigned:	Jim Cloudt
Period: 12/01/86 - 09/30/89 Amount: \$21,796	Plaintiff's Counsel:	George L. Preston Paris

Issue: Whether motor vehicle tax should fall on dealer/seller rather than the purchaser under §152.044. Related constitutional issues.

Status: Inactive.

Southwest Oil Co. of San Antonio, Inc. v. Bullock, et al. Cause #470,110

Diesel Fuel Tax; Protest Filed: 08/10/89	Asst. AAG Assigned:	Blake Hawthorne
Period: 11/01/83-12/31/85 Amount: \$61,750	Plaintiff's Counsel:	Donald H. Grissom Law Offices of Donald H. Grissom Austin

Issue: Acceptable methods to rebut the presumption that once a taxable sale of diesel fuel is made, all future sales are to be taxable as well.

Status: Inactive.

Thurman, Kay G. and Merlene G. Stroud v. Sharp Cause #97-06891

Inheritance Tax; Injunction Filed: 06/11/97 Period: DOD 11/14/82 Amount: \$279,420.77 plus interest	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Robert W. Swanson Von Kreisler & Swanson Austin
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Issue: Whether beneficiaries of an estate owe the balance of inheritance tax not paid by the estate. Statute of Limitations question.

Status: Answer filed.

Union Pacific Resources Co. v. Sharp, et al. Cause #95-13139

Natural Gas Production Tax; Refund Filed: 10/16/95 Period: 11/82-12/85 Amount: \$110,962	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Mark W. Eidman Ray Langenberg Scott, Douglas & McConnico
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Issue: Plaintiff requests that monies in escrow with the Comptroller's Office be applied to an audit liability.

Status: Discovery in progress. Settlement negotiations ongoing.

Vallado, Jan Clopton, Independent Executor of Estate of Marion Wallace Clopton, Jr. v. Sharp, et al. Cause #97-04810

Inheritance Tax; Protest Filed: 04/22/97 Period: DOD 08/30/94 Amount: \$1,937	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Kenneth B. Kramer Attorney at Law Wichita Falls
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Issue: Whether penalty should be waived.

Status: Answer filed.

Whitesboro ISD, et al. v. Texas Comptroller of Public Accounts Cause #97-09046

Property Tax; Substantial Evidence Review	Asst. AAG Assigned:	Christine Monzingo
Filed: 08/08/97	Plaintiff's Counsel:	E. Jeannie Navarro
Period: 1996		Attorney at Law
Amount: \$Not stated		Austin

Issue: Whether the Comptroller's property value study is incorrect in that it exceeds the market value of the subject property and causes the estimate of market value for various categories to exceed the actual market value of the School Districts' 1996 tax base, depriving it of state aid to which it is legally entitled. Plaintiffs also assert that the burden of proof is on the State to prove that Plaintiffs' valuations are incorrect.

Status: Cross-Motions for Summary Judgment heard on 06/25/98 and are under advisement.

Closed Cases

Arkla, Inc. v. Sharp, et al. Cause #93-02966

Franchise Tax; Refund Filed: 3/12/93 Period: 1988-1990 Amount: \$806,476	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Whether post-retirement benefits are a "debt." If included in surplus, is preemption provision of ERISA violated?

Status: Nonsuited.

Associated Technics Co., Inc. and Olmos Abatement, Inc. v. Sharp, et al. Cause #96-04152

Sales Tax; Declaratory Judgment Filed: 04/11/96 Period: 07/01/91-06/30/95 (ATC) 01/01/90-09/30/93 (Olmos) Amount: \$23,009.88 w/P&I (ATC); \$49,179.32 w/P&I (Stacliff); \$24,400.13 w/o P&I (Olmos)	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Ann del Llano The Trickey Law Firm Austin
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Issue: Whether removal of asbestos is an exempt service.

Status: Trial held 01/05/98. Ruling for Taxpayer, but court upheld State's claim of privilege for legal memoranda. Court of Appeals affirmed Trial Court's Judgment. Comptroller filed Motion for Rehearing. Motion for Rehearing denied.

Bob W. James Co., Inc. v. Sharp, et al. Cause #96-07406

Sales Tax; Protest Filed: 06/25/96 Period: 07/01/92-12/31/92 Amount: \$25,546	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Ira A. Lipstet Jenkins & Gilchrist Austin
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Issue: Whether certain services are taxable as real property services or are part of new construction of real property.

Status: Comptroller's Motion for Summary Judgment granted and taxpayer's Motion denied 12/14/98. Defendants' Motion to Modify Judgment filed 12/21/98.

Caterpillar, Inc. v. Sharp, et al. Cause #93-11176-A

Franchise Tax; Filed: 09/17/93 Period: 1992-1994 Amount: \$2,126,608	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo R. James George, Jr. James F. Martens Austin
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Issue: Whether vacation pay liabilities and other accrued expenses are franchise tax debt. Issues severed from post-retirement benefit issues (Cause No. 93-11176-A).

Status: Inactive. Agreed Judgment.

Caterpillar, Inc. v. Sharp, et al. Cause #93-11176

Appeals Court No. 03-95-00272-CV

Franchise Tax; Protest Filed: 09/17/93 Period: 1988-1991 Amount: \$2,473,179	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo R. James George, Jr. James F. Martens Austin
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Issue: Whether unfunded post-retirement benefit obligations should be excluded from taxable surplus as debt and whether failure to exclude them is preempted by ERISA.

Status: Plaintiff's Motion for Summary Judgment granted. State appealed. Appellate argument heard 01/10/96. Court of Appeals issued an opinion on 09/18/96: (1) reversing Caterpillar's Motion for Summary Judgment on each ground, (2) rendering judgment for the Comptroller on debt, ERISA preemption, and facial equal protection issues, and (3) remanding the equal taxation "as applied" issue for trial. Plaintiff's Motion for Rehearing overruled 11/20/96. Plaintiff's Application for Writ filed 01/17/97. Respondents' brief filed 03/20/97. ERISA preemption is the only issue before the Supreme Court. Writ denied 03/13/98. Case remanded for trial on the equal taxation as-applied claim. Set for 04/05/99. Nonsuit.

CIT Group Sales Financing, Inc. v. Sharp, et al. Cause #92-01467

Sales Tax; Refund Filed: 02/05/92 Period: 04/01/84-02/28/87 Amount: \$167,123	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez David E. Cowling Joe Garcia, Jr. Jones, Day, Reavis & Pogue Dallas
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Issue: Whether lease contracts separately state finance charges to the customer. Has Comptroller assessed sales tax on top of sales tax?

Status: Plaintiff filed notice of nonsuit.

Coats, Paul Harold v. Sharp, et al. Cause #96-04420

Controlled Substances Tax; Injunction Filed: 04/18/96 Period: 07/15/92 Amount: \$12,000	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Brantley Pringle Attorney at Law Fort Worth
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Issue: Whether the Controlled Substances Tax Act is unconstitutional on various grounds.

Status: Answer filed. Summary Judgment granted for Plaintiff.

Cooper Industries and McGraw-Edison Co. v. Sharp, et al. Cause #96-03563

Franchise Tax; Refund Declaratory Judgment Filed: 3/29/96 Period: 1988-1991 Amount: \$551,348	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo James F. Martens Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin
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Issue: Whether post-retirement benefits can be deducted from surplus as debt. Whether Tax Code §171.109 (j)(1) is being applied retroactively to report years 1988 through 1991. Whether §§171.109 (a) and (j) (1) are preempted by ERISA. Whether certain other estimated liabilities were erroneously included in surplus by the Comptroller.

Status: Dismissed for want of prosecution 06/29/99.

Down Time Services, Inc. v. Sharp, et al. Cause #96-03202

Sales Tax; Refund Filed: 03/18/96 Period: 1988-1992 Amount: \$32,076	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Tom Tourtellotte Tourtellotte & Kennon Austin
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Issue: Whether machinery Plaintiff purchased was acquired for resale in the form of a lease. Whether Plaintiff relied to its detriment on erroneous information from the Comptroller.

Status: Judgment for Plaintiff granted 03/22/99. Judgment not appealed.

Electronic Data Systems Corp. v. Sharp, et al. Cause #92-15381

Franchise Tax; Refund Filed: 11/04/92 Period: 1985 - 1986 Amount: \$311,137	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Cynthia M. Ohlenforst Hughes & Luce Dallas
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Issue: Whether minimum operating lease obligations may be deducted from surplus as debt. Whether Comptroller is liable under 42 USC §1983.

Status: Nonsuited.

Fleming Foods of Texas, Inc. v. Sharp Cause #95-07405

Interstate Motor Carrier Tax; Protest Filed: 06/14/95 Period: 07/01/89-03/31/92 Amount: \$204,809	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez J. Scott Morris Attorney at Law Austin
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Issue: Whether a taxpayer that already owns and operates a fleet of interstate highway trucks that has a mileage factor of .8374 for the prior year must use the same mileage factor in calculating the interstate motor vehicle tax on a newly acquired fleet of trucks that, under a previous owner, had a lower mileage factor.

Status: Duplicate case to one decided in favor of Comptroller.

Garza, Ruben Jr. v. Sharp, et al. Cause #95-01078

Controlled Substances Tax; Declaratory Judgment and Injunction Filed: 01/26/95 Period: 11/10/93 Amount: \$32,556	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne James Stafford Houston
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Issue: Plaintiff contends: Drug tax violates double jeopardy; it constitutes a Bill of Attainder; violates due course of law; violates the Texas self-incrimination clause; it authorizes unreasonable searches and seizures; it deprives Plaintiff of equal protection; and it authorizes revenues from an illegal source.

Status: Plaintiff's Motion for Summary Judgment served 01/21/99.

Geartech, Inc. v. Sharp, et al. Cause #96-12176

Sales Tax; Protest Filed: 10/08/96 Period: 01/01/90-10/31/93 Amount: \$217,070	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez Sharon K. Steckler Attorney at Law Sugar Land
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Issue: Whether the rental of "hobs" should be exempt under the manufacturing exemption and whether the purchase of certain gear machinery and equipment is exempt as an occasional sale.

Status: Order on Notice of Dismissal with Prejudice filed by plaintiff signed on 03/18/99.

General Electric Co. v. Sharp, et al. Cause #97-08149

Franchise Tax; Refund Filed: 07/16/97	Asst. AAG Assigned:	Christine Monzingo
Period: 1990-1991	Plaintiff's Counsel:	L. G. "Skip" Smith
Amount: \$3,552,416		Clark, Thomas & Winters Austin

Issue: Whether post-retirement and other post-employment benefits are a "debt." If included in surplus, is the preemption provision of ERISA violated?

Status: Nonsuited.

General Electric Co. v. Sharp, et al. Cause #98-08687

Franchise Tax; Refund Filed: 08/06/98	Asst. AAG Assigned:	Christine Monzingo
Period: 1988-1989	Plaintiff's Counsel:	L. G. "Skip" Smith
Amount: \$2,303,554		Clark, Thomas & Winters Austin

Issue: Whether post-retirement benefits are a "debt." If included in surplus, is preemption provision of ERISA violated?

Status: Nonsuited.

Grocers Supply Co., Inc. v. Sharp, et al. Cause #96-13035

Sales Tax; Refund Filed: 10/25/96	Asst. AAG Assigned:	Blake Hawthorne
Period: 01/88-07/90	Plaintiff's Counsel:	Tom Tourtellotte
Amount: \$17,857		Tourtellotte & Kennon Austin

Issue: Claim for refund under prior contract exemption and Rule 3.319, as it was in effect between 1984 and 1992. Whether the Comptroller could pass a rule contrary to Rule 3.319 and apply it retroactively. Issue involves exemption for two-party vs. three-party contracts and a policy change.

Status: Cross-motions for Summary Judgment heard 10/23/97. Court ruled for State. Plaintiff appealed. Oral argument heard 05/27/98. Judgment for State affirmed 08/13/98. Plaintiff's Motion for Rehearing overruled 11/30/98. Plaintiff's Petition for Review denied. Motion for Rehearing denied.

Highland Shores, Inc. v. Sharp, et al. Cause #97-00612

Franchise Tax; Refund Filed: 01/16/97 Period: 1991 Amount: \$44,602	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo L. G. "Skip" Smith Clark, Thomas & Winters Austin
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Issue: Whether the 1992 franchise tax on earned surplus is a retroactive tax.

Status: Nonsuited.

Houston Lighting and Power Co., Successor-In-Interest to Utility Fuels, Inc. v. Sharp, et al. Cause #95-15014

Franchise Tax; Refund Filed: 12/01/95 Period: 1988-1990 Amount: \$2,608,946	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo L. G. "Skip" Smith Clark, Thomas & Winters Austin
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Issue: Whether Plaintiff should be allowed to deduct from surplus as "debt" obligations under four contracts, including a mining agreement.

Status: Nonsuited.

Hughes Aircraft Co. v. Sharp, et al. Cause #94-14021

Franchise Tax; Refund Filed: 11/7/94 Period: 1989-90 Amount: \$96,287	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Cynthia M. Ohlenforst Paul J. Van Osselaer Hughes & Luce Dallas and Austin
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Issue: Whether Plaintiff should be allowed to exclude from surplus certain operating lease obligations.

Status: Nonsuited.

Hughes Aircraft Co. v. Sharp, et al. Cause #97-05387

Franchise Tax; Protest Filed: 05/05/97 Period: 1991-1994 Amount: \$30,697	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Cynthia M. Ohlenforst Barbara Whiten Balliette Hughes & Luce Dallas and Austin
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Issue: Whether Plaintiff should be allowed to exclude from surplus certain operating lease obligations.

Status: Nonsuited.

J.C. Penney Co., Inc. v. Sharp, et al. Cause #94-14979

Franchise Tax; Refund Filed: 12/2/94 Period: 1987-1990 Amount: \$692,280	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Whether vacation pay, deferred compensation of directors, post-retirement health benefits, cost of living pension pay, supplemental retirement benefits, and corporate relocation expenses are debts for franchise tax purposes. Also, whether the inclusion in surplus of Plaintiff's liability for post-retirement medical benefits violates the federal preemption provision of ERISA.

Status: Nonsuited.

Kimberly-Clark Corp. v. Sharp, et al. Cause #96-14023

Franchise Tax; Protest & Refund	Asst. AAG Assigned:	Christine Monzingo
Filed: 11/15/96	Plaintiff's Counsel:	John J. Herson
Period: 1988-1991		Kimberly-Clark Corp.
Amount: \$704,320		Neenah, WI
\$307,280		

Issue: Whether post-retirement benefits are a "debt." If included in surplus, is preemption provision of ERISA violated? Whether certain other estimated liabilities were erroneously included in surplus by the Comptroller.

Status: Nonsuited.

Koch Industries, Inc. v. Sharp, et al. Cause #98-08011

Franchise Tax; Protest	Asst. AAG Assigned:	Christine Monzingo
Filed: 07/24/98		
Period: 1992-1995	Plaintiff's Counsel:	L. G. "Skip" Smith
Amount: \$393,330		David H. Gilliland
		Clark, Thomas & Winters
		Austin

Issue: Whether post-retirement benefits are a "debt." Whether certain reserve accounts, including "shadow stock," were erroneously included in surplus.

Status: Nonsuited.

Lafarge Corp. v. Sharp, et al. Cause #96-10664

Franchise Tax; Protest and Refund	Asst. AAG Assigned:	Christine Monzingo
Filed: 09/03/96	Plaintiff's Counsel:	Sam Long
Period: 1988-1991		Cassell & Stone
Amount: \$608,913		Dallas

Issue: Whether a write-off of a cement plant should have been added back to surplus.
Operating lease obligations--Whether amounts due under fixed term leases are excludable from surplus as debt. Whether certain liability accounts are excludable from surplus as debt. Whether §171.109(j) is unconstitutionally retroactive. Whether post-retirement benefits are a "debt." If included in surplus, is the preemption provision of ERISA violated? Whether Plaintiff should be allowed to use alternative depreciation methods.

Status: Agreed Judgment signed 06/99.

McMinn, William A., et al. v. Sharp, et al. Cause #93-01523

Inheritance Tax; Declaratory Judgment Filed: 02/10/93 Period: 09/24/83 Amount: \$236,904	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Michael R. Tibbetts Delange, Hudspeth & Pitman Houston
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Issue: Whether certain property is subject to liens filed to insure collection of inheritance tax.

Status: Cross-motions for summary judgment heard on 08/10/98. Ruling for Plaintiff.
Judgment being drafted.

Minnesota Mining and Manufacturing Co. v. Sharp, et al. Cause #96-00424

Franchise Tax; Protest and Refund Filed: 01/11/96 Period: 1988-1991 Amount: \$289,201	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo L. G. "Skip" Smith Clark, Thomas & Winters Austin
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Issue: Whether post-retirement benefits are a "debt." If included in surplus, is preemption provision of ERISA violated?

Status: Nonsuited.

Proler International Corp v. Sharp, et al. Cause #94-06272

Franchise Tax; Protest and Refund	Asst. AAG Assigned:	Christopher Jackson
Filed: 5/25/94	Plaintiff's Counsel:	Mark W. Eidman
Period: 1988-1991		Ray Langenberg
Amount: \$524,326		Scott, Douglass & McConnico
		Austin

Issue: Whether Plaintiff's gross receipts must be based on the cost or equity method of accounting for its joint venture investments, rather than Plaintiff's share of the gross receipts. Equal protection and other constitutional arguments.

Status: Inactive. Nonsuited by Plaintiff 01/28/99.

Sabine Offshore Service, Inc. Successor in Interest to Sabine Marine Co. v. Sharp, et al. Cause #97-07698

Sales Tax; Refund	Asst. AAG Assigned:	Walter Dean
Filed: 07/03/97		
Period: 01/01/90-09/30/93	Plaintiff's Counsel:	Bruce M. Partain
Amount: \$27,151		Wells, Peyton, Greenberg & Hunt
		Beaumont

Issue: Whether sales tax is due on the sale of a vessel where the seller received a resale certificate with a 9-digit taxpayer number. Numbers are supposed to be 11 digits.

Status: Summary Judgment granted for Comptroller. Plaintiff has indicated he will not appeal.

Shell Oil Co. v. Sharp, et al. Cause #94-02717

Franchise Tax; Protest	Asst. AAG Assigned:	Christine Monzingo
Filed: 3/17/94		
Period: 1988-1990	Plaintiff's Counsel:	Robert H. Hobbs
Amount: \$891,777		Shell Oil Co.
		Houston

Issue: Whether amounts due under operating lease obligations are excludable from surplus as debt.

Status: Nonsuited.

Southern Union Co., Successor-in-Interest to Rio Grade Valley Gas Co. v. Sharp, et al. Cause #95-09417

Franchise Tax; Protest Filed: 07/31/95 Period: 1991-1993 Amount: \$27,385	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Whether post-retirement benefits should be excluded from taxable surplus as a debt.

Status: Nonsuited.

Timken Co., The v. Sharp, et al. Cause #97-09594

Franchise Tax; Protest Filed: 08/21/97 Period: 1990-1991 Amount: \$326,609	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo David E. Cowling Sheryl S. Scovell Jones, Day, Reavis & Pogue Dallas
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Issue: Whether post-retirement benefits are a "debt." If included in surplus, is preemption provision of ERISA violated? Whether §171.109(j) is unconstitutionally retroactive. Whether certain reserve accounts were erroneously included in surplus. Whether the Comptroller erroneously computed Plaintiff's gross receipts using a method other than GAAP.

Status: Nonsuited.

Zeppa, Keating V., in his individual capacity as Executor of the Estate of Joseph Zeppa v. Sharp, et al. Cause #97-09797

Inheritance Tax; Declaratory Judgment Filed: 08/26/97 Period: 07/10/92 Amount: \$399,587.17	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Jasper G. Taylor, III Marcy Hogan Greer Fulbright & Jaworski Houston & Austin
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Issue: Whether Plaintiff is individually liable for inheritance tax. Statute of limitations question.

Status: Hearing on State's Motion for Summary Judgment granted 12/22/97. Judgment affirmed by Third Court of Appeals 12/10/98. Plaintiff's Motion for Rehearing denied. Plaintiff's Petition for Review denied 05/20/99.

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